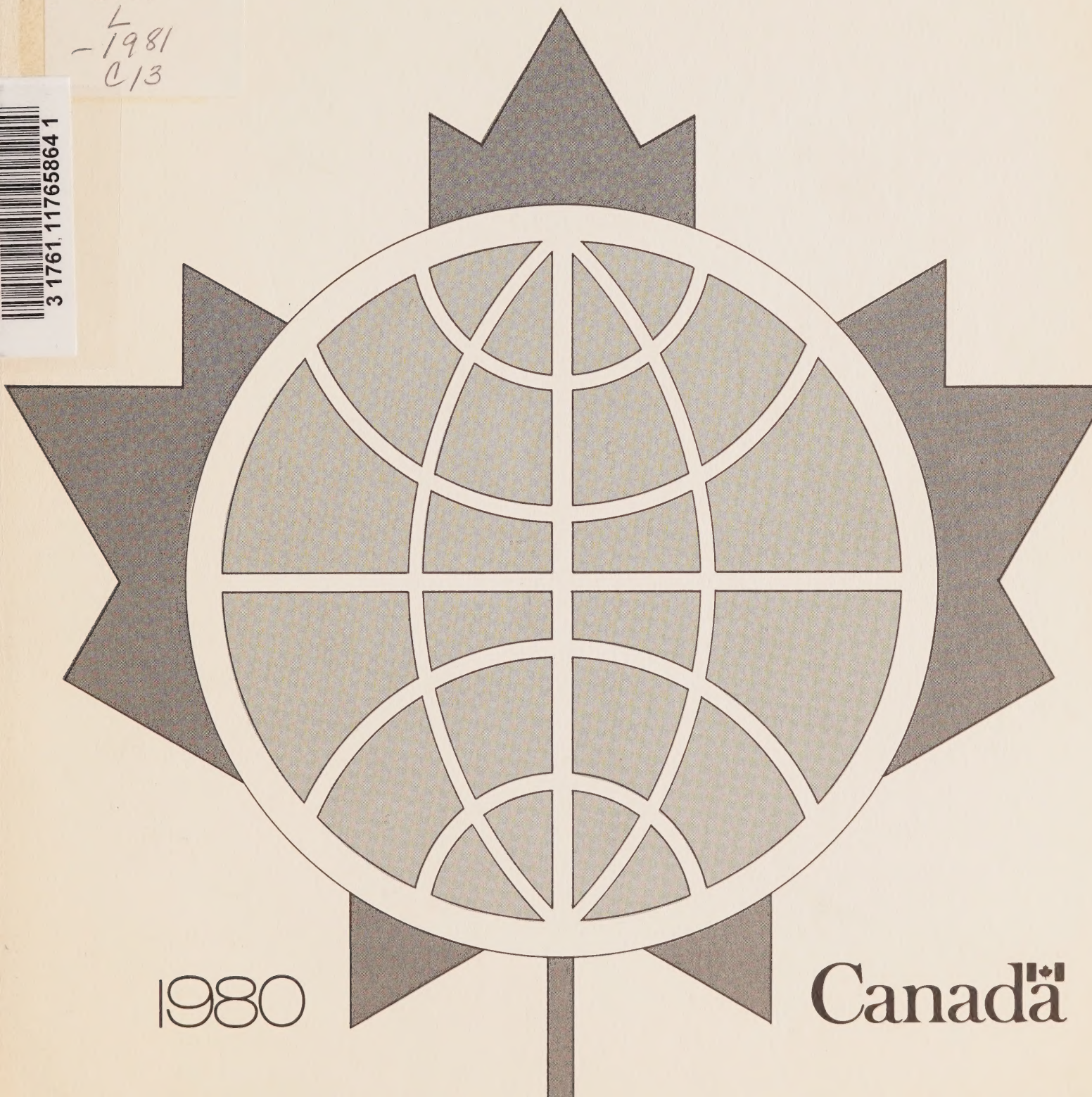
Labour Canada
Travail Canada



# Canada and the International Labour Organization







1980

Canada

# CANADA AND THE INTERNATIONAL LABOUR ORGANIZATIONS

by

Kalmen Kaplansky

Labour Canada

Travail Canada

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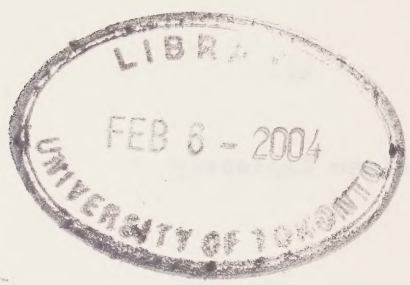


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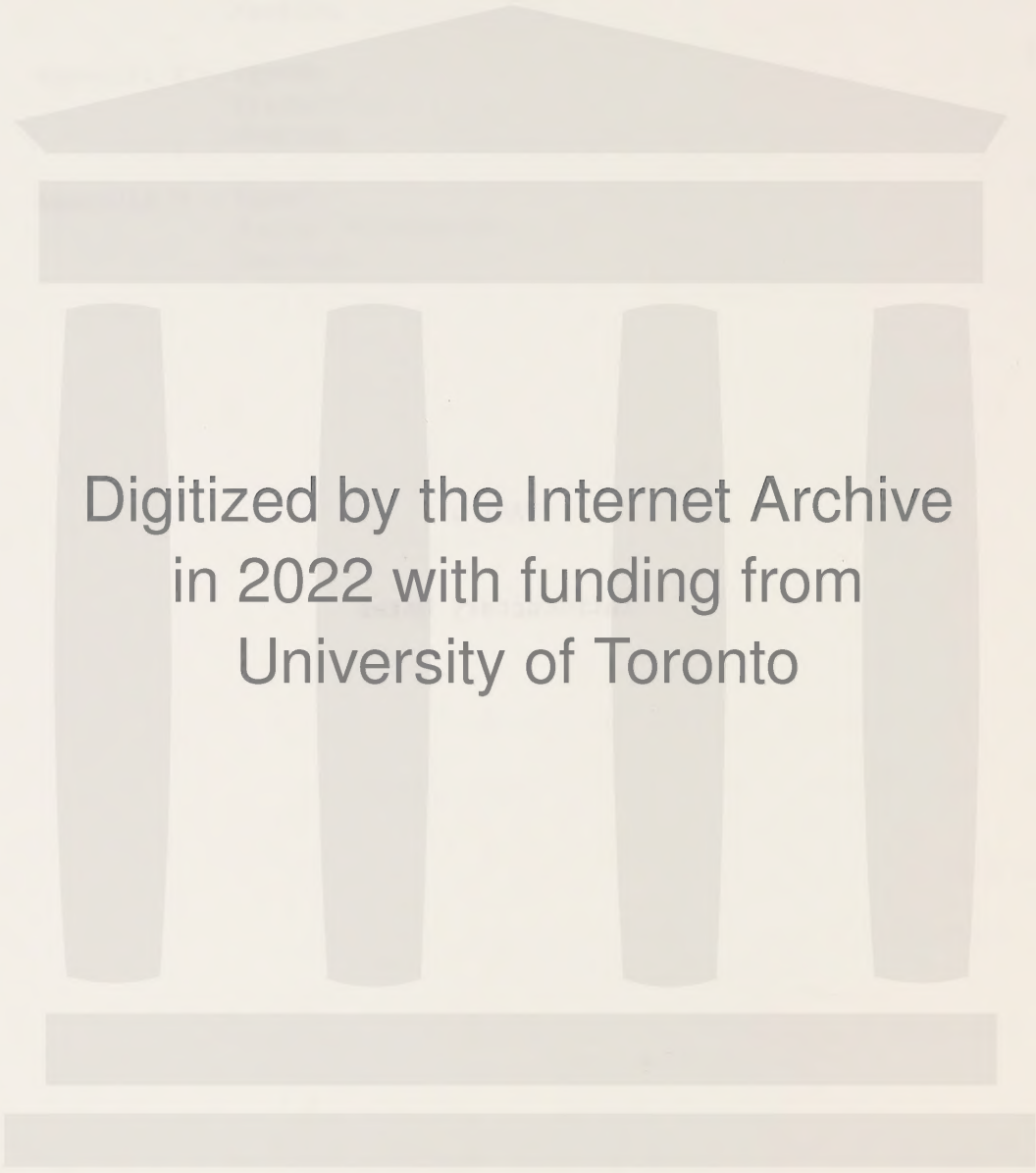

On November 1, 1979, the Honourable Lincoln Alexander, then Minister of Labour, retained my services to act as an adviser to the Department concerning Labour Canada's representation abroad, the way in which Labour Canada could best communicate with its constituents and Canada's role in relation to the International Labour Organization.

The present study deals with Canada's relations with the International Labour Organization and is submitted in a series of papers dealing with various aspects of Labour Canada activities in relation to the ILO.

## Terms of Reference

To advise on:

- Canada's role in relation to the International Labour Organization, the Department of Labour's objectives in that Organization, the priorities the said Department attaches to it and the resources that should be made available.

## The Establishment and Aims of the ILO

The International Labour Organization was created under the Treaty of Versailles in 1919, together with the League of Nations, but as an autonomous international organization. As such, the ILO survived the collapse of the League, and in 1946 became the first specialized agency associated with the United Nations, recognized as having special responsibility for social and labour questions.

Canada played an important role in the creation of the ILO and has been a member since the ILO was founded in 1919. For many years, Canada has been a member of the ILO Governing Body as one of the Ten States of Chief Industrial Importance.

The Constitution of the ILO, adopted in 1919, declared in its Preamble that universal and lasting peace can be founded only on the basis of social justice. The Preamble to the Constitution, formulating the aims of the Organization, has not been affected by the passage of time and is as valid now as it was over 60 years ago when it stated:

> "And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required....
>
> "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries; ...."

The same can be said of the "Declaration of Philadelphia", adopted by the International Labour Conference in 1944, and now an annex to the Constitution. The Declaration reaffirms the fundamental principles on which the Organization is based and, in particular, that:

- labour is not a commodity;

- freedom of expression and association are essential for sustained progress;

- poverty anywhere is a danger to prosperity everywhere;

- all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

While the aims of the ILO had an innovative thrust in 1919 and even in 1944, they are now enshrined in the declaratory, constitutional and standard-setting documents of the United Nations Organization, other Specialized and International Agencies, and their Member States.

Today, as in 1919, the basic issue in Canada and elsewhere is not formal adherence to these basic aims, obviously an important factor by itself, but their implementation at the national and international level and the methods used to achieve it.

The ILO's Methods

In order to fulfill its aims and purposes the ILO has been engaged in such activities as:

- the formulation of international policies and programs to help improve working and living conditions, employment opportunities (e.g., the World Employment Program), the promotion of basic human rights;

- the adoption of international labour standards in the form of Conventions and Recommendations to serve as guidelines for national authorities in putting these policies into action;

- an extensive program of international technical co-operation to help governments in making these policies effective in practice;

- training, education, research and publishing activities to help advance all these efforts.

The ILO is an international, intergovernmental organization, which has largely succeeded in maintaining the universality of its membership. Its program of activities should also be universal in scope and concern. It has to be meaningful to all parts of the world and to all Member States, regardless of their stage of economic and social development. Consequently, it might be useful to examine ILO's direct significance for Canada and for other countries similarly situated.

## ILO and Tripartism

A unique feature of the ILO, distinguishing it from any other international intergovernmental organization, is its tripartite character, which enables the representatives of workers and employers, on an equal footing with those of governments, to take part in all discussions, formulation of ILO policies and the process of decision-making. This tripartite system applies in the International Labour Conference, the Governing Body and in other ILO conferences and meetings (e.g., regional conferences, industrial committees).

Of particular importance is the active involvement of employers and workers, side by side with governments, in every stage of the ILO's standard-setting activities. The success of such activities largely depends on the extent of participation of workers and employers and on the way they make use of the rights conferred on them. In this respect, special complaint procedures are available in cases where trade union rights are violated or the terms of ratified Conventions not observed.

Within this framework, it is useful (1) to ascertain whether we have taken full advantage of the ILO tripartite structure in Canada and (2) to suggest possible new approaches.

## Dimensions of Canada's Participation in ILO

Canada's role as a member of the ILO has two dimensions: (1) international; and (2) domestic.

### (1) International Dimension

Canada's international role is the result of her status as a member of the international community of sovereign states and is subject to certain rights and obligations under international law. Normally, the Department of External Affairs is directly responsible for Canada's international relations. However, in the case of the ILO, the government of Canada conferred on the Department of Labour the direct responsibility for Canada's participation in the ILO activities.

Nevertheless, it is understood that whenever Canada's activities within the ILO may affect some broader aspects of Canada's foreign policy, the Department of Labour would seek advice from the Department of External Affairs and act accordingly.

The federal Government, acting on behalf of Canada as an international legal entity, has the exclusive power to ratify ILO Conventions, thus creating Canada's international obligation to comply with the terms of ratified Conventions; however, the implementation of such obligations would have to follow the constitutional division of legislative powers under the BNA Act. The co-operation of the provinces is, therefore, of paramount consideration.

It is extremely important to understand this aspect of Canada-ILO relations as it affects many of Canada's obligations as a member of most of the international, intergovernmental organizations.

(2) Domestic Dimension

The domestic dimension of Canada's role in the activities of the ILO is the result of the constitutional structure of the Canadian federation.

Under the BNA Act, the legislative jurisdiction in the area of labour and social affairs is divided between two levels of government - federal and provincial. Consequently, the implementation of ILO policies and programs, particularly regarding the standard-setting activities, often requires co-operative efforts on the part of the federal and provincial governments.

Further, the domestic aspect of Canada-ILO relations is linked with the tripartite character of the ILO structure. Under the ILO Constitution and under various ILO Conventions and Recommendations, workers' and employers' organizations are called upon to contribute at the national level to the implementation of ILO programs and ILO standards.

The question of meaningful application of tripartism in Canada is dealt with in one of the papers submitted within the framework of this study.

Labour Canada and the ILO

Labour Canada has direct responsibility for Canada-ILO relations, stemming in part from certain obligations assumed by every Member of the Organization. In this connection, the actual extent and performance of various functions is determined by the ILO Constitution, Standing Orders of the General Conference and the Governing Body, and the activities of various ILO organs and committees. All Members of the Organization are expected to abide by the obligations of membership.

Labour Canada has responsibility for a meaningful input into ILO activities and policies insofar as Canada is concerned. These functions require close co-operation with the provinces and workers' and employers' organizations.

An Assessment of Present Activities

As already indicated, the papers submitted in this study deal with the present and future roles of the Department. The work in which Labour Canada is now involved, mostly resulting from its constitutional obligations as a Member State, are dealt with in the following six papers.

1. Periodic Reports to the ILO on:

   (a) Ratified Conventions (Article 22 of the ILO Constitution);

   (b) Unratified Conventions and on Recommendations (Article 19 of the ILO Constitution);

2. Submission to the "competent" authorities of Conventions and Recommendations adopted by the International Labour Conferences (Articles 19 and 23 of the ILO Constitution);

3. Complaints to the ILO under Conventions No. 87 and 98;

4. Contribution to the Formation of International Labour Standards (Adoption of ILO Conventions and Recommendations);

5. Implementation and Ratification of ILO Conventions;

6. Preparation for, servicing of, and attendance at meetings on ILO matters in Canada and abroad.

These papers, in addition to describing the nature of Canada's ILO obligations and the procedures adopted to fulfill them, also contain a number of critical comments and recommendations.

The papers could also become part of a useful compendium for the guidance of Labour Canada and provincial government officers engaged in ILO activities, as well as for employers' and workers' organizations in this country, if it is so desired. To the best of my knowledge, no such comprehensive document is now presently available.

Recommended Initiatives

The second part of the study focuses on a number of other critical issues stemming from Canada's membership in ILO, and includes critical views, initiatives and recommendations for the following:

- A National ILO Tripartite Committee, which could become the umbrella structure for ongoing contact amongst the three parties involved in the Organization's activities, as well as the vehicle to popularize ILO programs and activities in Canada, in terms of the Canadian experience and reality;

- ILO Programs of Interest to Canada;

- International Fair Labour Standards;

- ILO Industrial Committees;

- European Regional Conferences;

- ILO-OECD-EEC Co-operation.

Finally, I wish to express my most sincere and grateful thanks to my colleague and friend of long standing, Jan Wanczycki, for his research and drafting, based on many years of association with ILO matters in the Department of Labour. Special thanks are also due to Chris Russ for his invaluable help in preparing this and other studies involved in my assignment. I also wish to thank most sincerely the Deputy Minister, Tom Eberlee and Assistant Deputy Minister, Robert Armstrong, for their continuous support and encouragement.

Kalmen Kaplansky

November 1980.

# PART 2

## An Assessment of Present Activities

# CHAPTER I

# PERIODIC REPORTS TO THE ILO

## A. Ratified Conventions (Article 22 of the ILO Constitution)

Article 22 of the Constitution of the ILO provides as follows:

> "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."

Another Article relevant to the reporting procedure is Article 23 of the ILO Constitution, which provides as follows:

> "1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of Articles 19 and 22.
>
> "2. Each Member shall communicate to the representative organizations recognized for the purpose of Article 3 copies of the information and reports communicated to the Director-General in pursuance of Articles 10 and 22."

### Contents of Detailed Reports

For each Convention, the Governing Body has adopted a report form which serves as a questionnaire and model for preparation of detailed reports. These reports should contain information concerning:

- all laws and regulations relevant to the Convention and copies of the relevant text (unless these have been submitted previously);
- details of the implementation of each article of the Convention by laws, regulations or otherwise;
- clarifications in response to the requests or comments made by the ILO Committee of Experts or the Conference Committee on the Application of Convention and Recommendations;
- which authorities are responsible for administration and enforcement of the relevant laws, regulations, etc.;
- any judicial or administrative decisions affecting the application of the Convention;

- a general assessment of the way the Convention has been applied, with relevant statistical data, enforcement activities, prosecutions, etc.;

- any comments or observations made by workers' or employers' organizations to the government about the way the Convention has been applied, or about previous reports, and any comments made by the government.

Copies of reports must be communicated to representative organizations of workers and employers in accordance with Article 23, paragraph 2, of the ILO Constitution. The organizations which have received the report are either listed in the report or in the covering letter to the ILO Office.

Distinction Between First and Subsequent Detailed Reports

There is a distinction between the first report following the entry into force of a Convention (one year after ratification) and the subsequent reports.

In the first report, the government should provide full information on all the matters mentioned in the report form. Subsequent reports are considerably simplified, and should only give information on the following matters:

- any new laws, regulations, etc. (with relevant copies);

- any changes or developments regarding the application of individual Articles of the Conventions;

- replies to requests or observations made by ILO supervisory bodies (Committee of Experts, or the Conference Committee on Application of Conventions and Recommendations);

- the practical application of the Convention, such as statistics, enforcement activities, judicial and administrative decisions, observations made by organizations of employers and workers;

- the organizations of workers and employers to which copies of the report have been communicated.

Periodicity of Detailed Reports

Until 1959, detailed reports on ratified Conventions were requested each year, as provided under Article 22 of the ILO Constitution. With the increase in the number of ratifications, a system of two-yearly reports was adopted in 1959. All Conventions in force were divided into two groups for which detailed reports were requested in alternate years. Under this system, every country sent reports each year on about half of the ratified Conventions.

In 1974, the Governing Body began an "In-Depth Review of International Labour Standards".[1] One of the aspects of the review was the question of further spacing the reports on ratified Conventions in order to assist governments and supervisory bodies in coping with constantly increasing numbers of ratified Conventions and the corresponding reports.

At the November 1976 Session of the Governing Body, a new system of reporting as from 1977 was approved,[2] as follows:

- first reports should continue to be requested immediately after the entry into force of a Convention for a country (one year after ratification).

- reports subsequent to the first report should normally be requested at two-yearly intervals for the following list of Conventions (which may be added to or amended by the Governing Body):

  Freedom of Association: Nos. 11, 84, 87, 98, 135, 141;
  Forced Labour: Nos. 29, 105;
  Discrimination: Nos. 100, 111;
  Employment Policy: No. 122;
  Migrant Workers: Nos. 97, 143;
  Labour Inspection: Nos. 81, 85, 129;
  Tripartite Consultation: No. 144.

For other Conventions, the two reports following the first report should normally be requested at two-yearly intervals, and thereafter, at four-yearly intervals.

Each country should send an annual general report on those Conventions for which a detailed report is not due. Where this general report indicates substantial changes in legislation or practice, these should be examined without waiting for the next detailed report on the Conventions concerned.

Cases in Which More Frequent Reporting is to be Requested

- when a Member fails to report or to reply to comments by Supervisory Bodies, a detailed report would be due the following year;

- when there are serious problems of application, the ILO Committee of Experts on the Application of Conventions and Recommendations or the Conference Committee on the Application of Conventions and Recommendations should be able to request that a detailed report be supplied earlier than the year in which it would normally be due;

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[1] G.B. 194/PFA/12/5 - 194th Session, Geneva, November 1974.

[2] G.B. 201st Session, Geneva, November 1976, Record of Decisions.

- following observations on the application of a ratified Convention made by a national or international organization of workers or employers, the ILO supervisory bodies may request that a detailed report be supplied earlier than the year in which it would normally be due;

- the Governing Body may decide that detailed reports be requested at shorter intervals, in consideration of current developments, relevance to the objectives of the Long-Term Plan, or for any other reason.

## ILO PROCEDURES

Letters requesting reports on ratified Conventions are sent to the governments by the ILO Office in May or June each year.

Attached are:

- a list of the Conventions on which detailed reports are due;
- the report forms for each Convention;
- copies of observations and "direct requests" by the Committee of Experts to which replies are due in the reports;
- guidance notes on various matters to be taken into account in preparing the reports.

These reports are to be sent to the ILO Office by October 15 each year.

Under Article 23, paragraph 1, of the ILO Constitution a summary of the reports on the ratified Conventions has to be submitted to the next Session of the Conference. This summary is published each year as Conference Report III (Part 1).3

## DEPARTMENT OF LABOUR PROCEDURES

Until now, Canada has ratified 26 ILO Conventions. The most recent ratifications took place in 1972. Convention No. 80 - Final Articles of Revision, 1946, and Convention No. 116 - Partial Articles Revision, 1962, are procedural Conventions and do not require the sending of reports. In 1978, Canada denounced ratification of Convention No. 45 - Employment of Women on Underground Work in Mines of All Kinds. Consequently, Canada reports to the ILO on 23 ratified Conventions.4 All these reports are not first but subsequent reports and therefore refer to matters which have occurred since previous reports.

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[3]For further details on ILO Procedures - see - "Manual on Procedures Relating to International Conventions and Recommendations", Geneva, 1965.

[4]List of ILO Conventions Ratified by Canada - Appendix 1.

Under the current system of reporting, the Conventions ratified by Canada fall, as a general rule, into the following categories:

(a) At Two-Yearly Intervals:

Convention No. 87 - Freedom of Association and Protection of the Right to Organize;

Convention No. 100 - Equal Remuneration;

Convention No. 105 - Abolition of Forced Labour;

Convention No. 111 - Discrimination (Employment and Occupation);

Convention No. 122 - Employment Policy.

(b) At Four-Yearly Intervals:

All other Conventions ratified by Canada.

(c) General Reports:

Each year, Canada is requested to send a general report on those Conventions for which detailed reports are not due. This report indicates substantial changes in legislation or practice affecting the application of particular Conventions.

Reports Requested by the ILO Since 1977
(Under the New System of Reporting)

1977:

Convention No. 45 - Underground Work (Women);

Convention No. 88 - Employment Service;

Convention No. 105 - Abolition of Forced Labour (including "direct requests" by the ILO Committee of Experts);

Convention No. 108 - Seafarers' Identity Documents.

General Report - (New changes of fundamental importance for any other ratified Conventions)

1978:

Convention No. 8 - Unemployment Indemnity (Shipwreck);

Convention No. 14 - Weekly Rest (Industry);

Convention No. 22 - Seamen's Articles of Agreement;

Convention No. 87 - Freedom of Association and Protection of the Right to Organize (including "direct requests" by the ILO Committee of Experts);

Convention No. 100 - Equal Remuneration (including "direct requests" by the ILO Committee of Experts);

Convention No. 111 - Discrimination (Employment and Occupation);

Convention No. 122 - Employment Policy (including "direct requests" by the ILO Committee of Experts).

General Report - (New changes of fundamental importance for any other ratified Conventions)

1979:

Convention No. 16 - Medical Examination of Young Persons (Sea);

Convention No. 27 - Marking of Weight (Packages Transported by Vessels);

Convention No. 32 - Protection Against Accidents (Dockers) (Revised);

Convention No. 63 - Statistics of Wages and Hours of Work (including "direct requests" by the ILO Committee of Experts);

Convention No. 69 - Certification of Ships' Cooks;

Convention No. 73 - Medical Examination (Seafarers);

Convention No. 74 - Certification of Able Seamen;

Convention No. 105 - Abolition of Forced Labour (including "direct requests" by the ILO Committee of Experts).

General Report - (New changes of fundamental importance for any other ratified Conventions)

1980:

Convention No. 1 - Hours of Work (Industry);

Convention No. 15 - Minimum Age (Trimmers and Stokers);

Convention No. 26 - Minimum Wage Fixing Machinery;

Convention No. 58 - Minimum Age (Sea) (Revised);

Convention No. 68 - Food and Catering (Ships' Crews);

Convention No. 87 - Freedom of Association and Protection of the Right to Organize (including "direct requests" by the ILO Committee of Experts);

Convention No. 111 - Discrimination (Employment and Occupation);

Convention No. 122 - Employment Policy (including "direct requests" by the ILO Committee of Experts).

General Reports - (New changes of fundamental importance for any other ratified Conventions)

Preparation of Reports on Ratified Conventions

As mentioned above, Canada reports on 23 ratified Conventions. Of these, 13 Conventions (Nos. 7, 8, 15, 16, 22, 27, 32, 58, 68, 69, 73, 74, 108) are Maritime Conventions within exclusive federal jurisdiction and of direct interest to the Ministry of Transport.

In processing reports on Maritime Conventions, the role of the Department of Labour is limited to the following functions:

(a) sending a request from the Assistant Deputy Minister (Policy Co-ordination and Liaison) to the Director of the Canadian Coast Guard at Transport Canada asking for the preparation of reports due as required by the ILO;

(b) upon receiving the reports, sending them to the ILO;

(c) sending a "thank you" letter to the Ministry of Transport for the preparation of the reports;

(d) sending copies of the reports for information to workers' and employers' organization;

(e) sending copies of the reports for information to the provinces (and provincial liaison officers on ILO).

NOTE: Communication of copies of reports to workers, employers and provinces takes place when all reports due in a given year have been sent to the ILO.

In processing reports regarding the 10 remaining Conventions and the General Report the role of the Department of Labour (and specifically the ILO unit) is somewhat different.

The 10 Conventions are:

1 - Hours of Work (Industry);
14 - Weekly Rest (Industry);
26 - Minimum Wage - Fixing Machinery;
63 - Statistics of Wages and Hours of Work;
87 - Freedom of Association and Protection of the Right to Organize;
88 - Employment Service;
100 - Equal Remuneration;
105 - Abolition of Forced Labour;
111 - Discrimination (Employment and Occupation);
122 - Employment Policy.

Often the request for reports is accompanied by comments of the ILO Supervisory Bodies (usually in the form of "direct requests" by the ILO Committee of Experts). It is the direct concern of the ILO unit to see that "direct requests" are properly answered. This often requires consultation with the provinces involved, regarding, for example, implementation of Convention 87. The process of consultation is a flexible one. The ILO unit frequently prepares draft answers to "direct requests" and sends them to the relevant provinces for their comments.

At the request of the Department of Labour, the basic reports regarding the 10 Conventions are prepared as follows:

- Reports on Conventions Nos. 1, 14, 26, 87 are prepared by the Legislative Analysis Division;

- Reports on Convention No. 63 are prepared by the Labour Data Branch;

- Reports on Convention No. 105 are prepared by the ILO unit in consultation with the Department of the Solicitor General and the Department of Transport;

- Reports on Conventions Nos. 100 and 111 are prepared by the Canadian Human Rights Commission (previously they were prepared by the Women's Bureau and Fair Employment Practices Branch of the Department of Labour respectively);

- Reports on Convention No. 88 are prepared by the Department of Manpower and Immigration (The Canada Employment and Immigration Commission);

- Reports on Convention No. 122 are prepared by the Economic Analysis Directorate in consultation with the Department of Regional Economic Expansion, the Department of Finance, and the Canada Employment and Immigration Commission;

- The General Report is finalized by the ILO unit on the basis of information received from other Departments or Branches.

All reports prepared by other Branches or Departments are sent in draft form to the ILO unit, where they are critically assessed as to form and content. Particular attention is paid to reports concerning Conventions related to labour standards, freedom of association and labour-management relations, equal remuneration, discrimination in employment and occupation. Since 1978 all reports have been in both official languages. Translation are checked by the ILO unit to be sure that the contents of the reports are not distorted. Copies of reports sent to the Quebec Department of Labour and to the C.N.T.U. are in French.

Starting with 1980, draft reports concerning Conventions within both federal and provincial jurisdictions are sent to the provinces and territories for comments. Reports are then finalized and sent to the ILO Office in Geneva.

After sending reports to the ILO, copies (as provided by Article 23 of the ILO Constitution) are sent to employers' and workers' organizations:

- The Canadian Labour Congress;
- The Confederation of National Trade Unions;
- The Canadian Railway Labour Association;
- The Canadian Manufacturers' Association;
- The Canadian Chamber of Commerce;
- The Canadian Construction Association;
- The Railway Association of Canada.

Copies of reports are also sent for information to provincial Deputy Ministers of Labour (and to provincial ILO Liaison Officers). Finally, "thank you" letters are sent to all Branches and Departments involved in the preparation of Reports.

## COMMENTS REGARDING PRESENT PROCEDURES APPLIED BY THE DEPARTMENT OF LABOUR

Present procedures applied in reporting on ratified Conventions involve the blending of the ILO unit expertise with the expertise of other Branches or other Departments directly involved in the areas to which a given Convention is relevant. The final responsibility for the form, content and time of the reports lies with the ILO unit of the Department of Labour. The system appears to be working reasonably well and no changes are suggested.

### Recommendation

I recommend that departmental Branches and other federal agencies charged with the drafting of reports on ratified Conventions, be informed of the scheduling of reports required at 2 and 4 year intervals. In this way, they would be aware of the

Conventions for which a report will be requested in 1981 or 1982 as well as the target time for submitting the draft report to the departmental ILO unit. This would result in an appreciable expediting of report preparation since the ILO report forms do not change from year to year and the drafting of reports could be started at an early date.

B. Unratified Conventions and Recommendations (Article 19 of the ILO Constitution)

When requested by the ILO Governing Body, a country has to send reports on unratified Conventions, and on Recommendations which by their very nature are not subject to ratification.

Under Article 19, paragraph 5(e) of the ILO Constitution, in the case of any Convention which a Member State has not ratified, it undertakes that it will

> "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention."

Under Article 19, paragraph 6(d) of the Constitution, in the case of any Recommendation, Member States undertake that they will

> "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation showing the extent to which effect has been given, or is proposed to be given to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them."

Similar obligations to report on unratified Conventions and on Recommendations are laid down with regard to federal states, by Article 19, paragraph 7(b)(iv) and (v) of the Constitution.

When the subject matter of a Convention or Recommendation, in whole or part, involves provinces (in the case of Canada) the report should cover the situation with respect to both federal and provincial jurisdictions.

Under Article 23, paragraph 2, of the Constitution, governments are required to communicate copies of their reports on unratified Conventions and on Recommendations to representative organizations of employers and workers.

## ILO Procedures

### Choice of Instruments to Report

The selection of instruments for the preparation of reports is made by the Governing Body. The Conventions and Recommendations on which reports are requested are grouped by subject matter. Only a limited number of instruments are selected, so as not to overburden either the governments responsible for the preparation of the reports or the supervisory bodies entrusted with examining the reports. Usually the subject matter of the selected instruments is of current interest. The preparation of reports provides the governments with an opportunity to review their current policies and legislation. The analysis of reports by the ILO supervisory bodies and the discussion at the General Conference may lead to the revision of the existing instruments.

### Report Forms

The report form is a standard form adopted by the Governing Body. However, in certain cases special and more detailed report forms are adopted.

### Requesting Reports

Letters requesting reports on unratified Conventions and on Recommendations are sent by the ILO Office to governments in January of each year. Attached are the report forms and the texts of each of the instruments concerned. The report form is a standard form adopted by the Governing Body. However, in certain cases special and more detailed report forms are adopted. The reports are required to be sent to the ILO Office by June 30.

Under Article 23, paragraph 1, of the ILO Constitution, a summary of the reports has to be submitted to the next session of the ILO Conference. This summary is published each year as Conference Report III (Part II).

### General Survey

On the basis of the reports received, the Committee of Experts makes a general survey of national laws and practice regarding the subject of reports. The Committee examines difficulties mentioned by governments regarding the application of particular standards and may clarify the scope of these standards or indicate means of overcoming obstacles to their implementation (or ratification in the case of Conventions). The general survey is the subject of general discussion in the Conference Committee on Application of Conventions and Recommendations, and this discussion may lead to further action by the ILO. The general survey is of great help in

assessing the exact meaning of various provisions of a Convention, particularly when its ratification is being considered. The survey is published as part of the documentation submitted to the ILO Conference.

In-Depth Review of International Labour Standards

In the course of reviewing international labour standards, the Governing Body also reviewed the question of reports on unratified Conventions and on Recommendations requested under Article 19 of the ILO Constitution. It was felt that existing practice as regards requests for reports was satisfactory. It was considered desirable to call for such reports at relatively regular intervals on instruments dealing with fundamental human rights, periodically to request reports concerning difficulties and prospects of ratification for important groups of Conventions, and also to use this procedure to identify gaps in standards and needs for revision of standards.[5]

DEPARTMENT OF LABOUR PROCEDURES

The Department of Labour usually receives a letter in January requesting reports under Article 19. The reports cover the period up until December 31 of the preceding year and are due in the ILO before July 1st. The ILO unit considers which Branch or Department would be most appropriate to write the report (or reports), and then sends a letter requesting the report's preparation.

In 1978, the report on Convention No. 29 - Forced Labour was prepared by the Legislative Analysis Division.

In 1979, reports on:

Convention No. 97 - Migration for Employment (Revised), 1949

Convention No. 143 - Migrant Workers (Supplementary Provisions), 1975

Recommendation 86 - Migration for Employment (Revised), 1949

Recommendation 151 - Migrant Workers, 1975

were prepared by the Canada Employment and Immigration Commission.

In 1980, reports were requested on:

Convention No. 138 - Minimum Age, 1973

Recommendation 146 - Minimum Age, 1973

from the Conditions of Work Branch of the Department.

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[5]G.B. 201/SC/2/3 - 201st Session, Geneva, November 1976. The instruments on which reports have been requested under Article 19 of the Constitution since 1949 are listed in Appendix "2" to this paper.

As of 1980, the provinces and territories are consulted on the contents of reports on Conventions and Recommendations the subject matter of which is partly within federal and partly within provincial jurisdiction. Following these consultations, the ILO unit finalizes the reports and sends them to the ILO Office in Geneva.

Also, copies of the reports are sent to workers' and employers' organizations as required by Article 23 of the ILO Constitution. Finally copies of the reports are sent to the provinces (territories) and to the ILO liaison Officers. Letters of thanks are then sent to the Branches or Departments which prepared the reports.

## COMMENTS REGARDING PRESENT PROCEDURES APPLIED BY THE DEPARTMENT OF LABOUR

The preparation of reports on unratified Conventions and on Recommendations often creates more problems for the ILO unit than the preparation of reports on ratified Conventions.

Reports on ratified Conventions are sent at two-yearly intervals (in some cases, under the new system, at four yearly intervals). Consequently, the Branches and Departments responsible for the preparation of these reports acquire the necessary expertise. However, reports on unratified Conventions and on Recommendations may be asked for the first time or at intervals of several years, often involving a Branch or Department which has never handled such assignments before.

There have been cases in which the draft reports, usually sent to the ILO unit very close to the deadline, have been unsatisfactory and required re-writing by the ILO unit, thus delaying the sending of the report to the ILO in Geneva.

To avoid such situations the ILO unit should have frequent consultations with the person assigned to the preparation of the report, follow closely the progress made, and insist that the draft report be returned by the Head of the Branch or Program or Department to whom the original request was sent.

### Recommendation

In order to ensure the quality of draft reports on unratified Conventions and on Recommendations prepared by other Branches or Departments, the ILO unit should insist that the draft reports be returned to the ILO unit under the signature of the official to whom the original request was addressed.

## CHAPTER II

## SUBMISSION TO THE "COMPETENT" AUTHORITIES OF CONVENTIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCES (ARTICLES 19 AND 23 OF THE CONSTITUTION)

The submission to the "competent" authorities of newly adopted Conventions and Recommendations is one of the most fundamental obligations imposed on Member States by the ILO Constitution. The procedures involved, insofar as Canada is concerned, are regulated by Article 19, paragraphs 5 to 7, and Article 23 of the ILO Constitution, Memorandum of the ILO Governing Body concerning the obligation to submit Conventions and Recommendations to the competent authorities, and Order in Council P.C. 1977-552-March 3, 1977.

### Constitutional Obligations

Article 19:

5. In the case of a Convention:

(a) the Convention will be communicated to all Members for ratification;

(b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;

(c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarding as competent, and of the action taken by them;

6. In the case of a Recommendation:

(a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;

(b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the

closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;

(c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;

7. In the case of a federal State, the following provisions shall apply:

(a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;

(b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal government shall -

(i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state, provincial or cantonal authorities for enactment of legislation or other action;

(ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State co-ordinated action to give effect to the provisions of such Conventions and Recommendations;

(iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal, state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;

Article 23:

1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of Articles 19 and 22.

2. Each Member shall communicate to the representative organizations recognized for the purpose of Articles 3 copies of the information and reports communicated to the Director-General in pursuance of Articles 19 and 22.

Memorandum Concerning the Obligation to Submit Conventions and Recommendations to the Competent Authorities

The memorandum was originally adopted by the Governing Body in 1954 in order to assist governments in carrying out their constitutional obligations in this field and to facilitate the communication along uniform lines of the information requested. The Governing Body amplified the text of the memorandum in 1958, and revised it in 1980 in order to take into account subsequent developments.

The memorandum does not impose new obligations on Member States in addition to those provided for in the ILO Constitution but explains the constitutional provisions and indicates measures that appear necessary or desirable to be taken in the light of comments made by the Committee of Experts on the Application of Conventions and Recommendations and of the Conference Committee on the Application of Conventions. It also contains a questionnaire with a view to obtaining information on the measures taken.

Detailed provisions of the Memorandum are as follows:

Nature of the Competent Authority

- the competent authority is the authority which, under the constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations;

- the competent authority should normally be the legislature;

- even when a legislative assembly exists, the executive or another body may be invested with power to legislate on certain subjects under constitutional provisions, or by virtue of a general or special delegation granted by parliament. Sometimes the body concerned is itself a subordinate body of parliament. In such cases it would be desirable that Conventions and Recommendations should also be submitted to the legislative assembly itself in order to achieve the second objective of the submission,

that of informing and mobilizing public opinion. Discussion in a deliberative assembly - or at least information of the assembly - can constitute an important factor in the complete examination of a question and in a possible improvement of measures taken at the national level; in the case of Conventions, it might result in a decision to ratify;

- in the case of instruments not requiring action in the form of legislation, it would be desirable - to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met - to submit these instruments also to the parliamentary body.

The Committee of Experts and the Conference Committee, in their respective reports, pointed out that one of the purposes of the submission procedure in Article 19 of the Constitution was to bring Conventions and Recommendations before public opinion, and, therefore, it was desirable to submit all such instruments to the national legislature, even in cases in which some other body or authority might be empowered to take the necessary implementary measures.

Extent of the Obligation to Submit

Article 19 lays down the obligation to place before the competent authorities all instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations. On the other hand, the obligation of governments to submit the instruments to the competent authorities does not imply any obligation to propose the ratification or application of the instrument in question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities.

Form of Submission

Since Article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities, the submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the government's views as to the action to be taken on the instruments.

The essential points to bear in mind are:

(1) that at the time of, or subsequent to, the submission of Conventions and Recommendations to the legislative authorities, governments should either indicate what measures might be taken to give effect to these instruments, propose that no action should be taken, or suggest that a decision should be postponed; and

(2) that there should be an opportunity to take up the matter for debate within the legislature.

Time Limits

In virtue of the formal provisions of Article 19, the submission of Conference decisions to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference. It should be stressed that this provision applies to non-federal as well as federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that Member States have respected the prescribed time limits, it would be advisable to indicate, in the communication to the Director-General, the date on which the decisions of the Conference had been submitted to the competent authorities.

Obligations of Federal States

As regards federal States, it is pointed out that, under Article 19 of the Constitution, paragraph 7(b)(i), whenever action by the constituent states, provinces or cantons is considered "appropriate", the government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the "appropriate authorities" of the constituent states, provinces or cantons for the enactment of legislation or other action.

Comments

Regarding the actual placing of instruments before a legislative body, at one point, the ILO clarified that in the case of federal states the tabling of all adopted instruments in the federal parliament is sufficient in fulfilling obligations under Article 19. This approach could be explained by two considerations: a) a practical one: the tabling in all provincial legislatures of instruments within provincial jurisdiction would take several years; b) a legal one: it is the federal government which represents Canada as a member of the ILO and obligations resulting from the ILO Constitution are federal obligations as far as the ILO is concerned.

Further, it is the Canadian approach that once the instruments are tabled in the federal parliament, those with subject matter under exclusive provincial jurisdiction or within both federal and provincial jurisdictions, are sent to the provinces for "the enactment of legislation or other action", as provided by Article 19, paragraph 7(b)(i). The Canadian approach to the submission of adopted instruments to the "competent" authorities has never been questioned by the ILO and appears to be in line with Article 19.

Communication to the Representative Organizations

Under Article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must also be sent to the representative employers' and workers' organizations. Finally, to facilitate the communication along uniform lines of the information requested by the Director-General of the ILO, the Memorandum enumerates specific questions on the measures taken to be answered in the case of unitary States and in the case of federal States.

Order in Council P.C. 1977 - 552 - March 3, 1977

This Order in Council (originally adopted in 1950 and revised in 1977) prescribes the procedure to be followed by the government of Canada upon receipt of Conventions and Recommendations adopted by the International Labour Conference; and the transmission to the provinces of those instruments which are appropriate for action by the governments of the provinces, in accordance with paragraph 7 of Article 19 of the ILO Constitution.

The Order in Council provides:

1. The Minister of Labour shall refer to the Minister of Justice any Convention or Recommendation adopted by an International Labour Conference for the opinion of the Minister of Justice as to whether the Convention or Recommendation is appropriate under the constitutional system of Canada for federal action or for action, in whole or in part, by the governments of the provinces, and the Minister of Justice shall furnish his opinion to the Minister of Labour accordingly; and

2. In any case where the Minister of Justice advises the Minister of Labour that a Convention or Recommendation is appropriate under the constitutional system of Canada, in whole or in part, for action by the governments of the provinces rather than for federal action, the Minister of Labour shall refer the Convention or Recommendation to the provincial Ministers of Labour and, where relevant, to the provincial Ministers of Intergovernmental Affairs and shall advise them of the opinion of the Minister of Justice. (P.C. 1977 - 552 - March 3, 1977).

Comments

The original Order in Council P.C. 3252 of July 5, 1950, provided, in paragraph 2, for the transmission of instruments relevant to provincial jurisdiction to the Lieutenant-Governors of the provinces through the intermediary of the Secretary of State. This procedure was found to be cumbersome and inadequate as the provincial Departments of Labour seemed to be unaware of the instruments which had been sent to the Lieutenant-Governors in the provinces.

The issue was discussed at the annual meetings of the Deputy Ministers of Labour on ILO questions and a consensus was reached that the instruments should be transmitted directly by the federal Minister of Labour to the provincial Ministers of Labour, as the latter in most cases are directly responsible for the implementation of ILO Conventions and Recommendations in the provinces. If, in some cases, the subject matter of the adopted Conventions and Recommendations were within the jurisdiction of other provincial departments, for example, Departments of Health and Welfare, it was agreed that the provincial Ministers of Labour would bring such instruments to the attention of the relevant departments. Further, following the establishment in several provinces of Departments of Intergovernmental Affairs, it was considered appropriate to transmit the instruments to such provincial departments as well.

This revised procedure, regulated by the Order in Council of 1977, seems to be satisfactory to all parties concerned.

## ILO Procedures

The "Manual on Procedures Relating to International Labour Conventions and Recommendations"[1] describes ILO procedures related to the submission of instruments to the competent authorities, as follows:

(a) Immediately after their adoption by the Conference, the texts of Conventions and Recommendations are communicated to governments by circular letter recalling the obligations arising under Article 19 of the Constitution with regard to their submission to the competent authorities. The Governing Body memorandum is also appended to the circular letter.

(b) On the expiration of the period of one year from the closing of the session of the Conference at which the instruments were adopted, a letter of reminder is addressed to all governments which have not supplied information, in accordance with the questionnaire in the Governing Body memorandum, indicating that submission has taken place. This circular is accompanied by a further copy of the Governing Body memorandum.

(c) On the expiration of the period of 18 months from the closing of the session of the Conference at which the instruments were adopted, a further, similar reminder is sent.

(d) The Committee of Experts has requested the Office, on receipt of information concerning submission of Conventions and Recommendations to the competent authorities, to check whether the particulars and documents requested by the Governing Body memorandum, as well as replies to any observations or requests made by the

[1] ILO - D.31 - 1965, Geneva 1965.

Committee of Experts or the Conference Committee, have been furnished; if not, the Office will request the government concerned to supply the missing information or documents. This check by the Office is of a procedural nature, the substance of the information supplied being examined by the competent supervisory bodies.

Summary

Under Article 23, paragraph 1, of the Constitution, a summary of the information supplied under Article 19 has to be laid before the next meeting of the Conference. This summary is published each year as Conference Report III (Part III).

Information Obtainable from the Office

With a view to assisting governments in discharging their obligations in regard to the submission of Conventions and Recommendations to the competent authorities, the Office can supply them with information concerning the practice followed by various countries, including specimen copies of certain national submission documents.

## Department of Labour Procedures

Procedures concerning action taken after the Conference regarding ILO instruments have evolved in the course of years, as follows:

1. Official communication from the ILO of authentic instruments adopted by the ILO Conference _____ August.

2. The request for the opinion of the Department of Justice regarding jurisdiction _____ September.

3. After receipt of Justice's opinion and consultation, a statement for use of the Minister of Labour in the House of Commons and the Government Leader in the Senate is prepared _____ January-February.

4. A memo to the Deputy Minister enclosing 5 sets of documents for transmittal to Minister's office:

   (a) statement;

   (b) copies of Justice's opinion;

   (c) bilingual texts of instruments
   (2 sets for House of Commons)
   (2 sets for Senate)
   (1 set for file) _____ February-March;

5. Actual tabling of documents (texts of Conventions and Recommendations; opinion of Justice regarding jurisdiction) in the House of Commons and Senate _____ February-March; (At present, copies of the submission are distriuted to members of both Houses of Parliament.)

6. Letter to Under-Secretary of State with sets of documents for transmittal to Lieutenant-Governors of provinces.

7. Instruments, plus Justice's opinion sent to employers, workers and provincial Deputy Ministers for information.

8. Once the above steps are completed a letter to the ILO Director-General informing him of the action taken (including copies of Hansard with the relevant statements).

It should be added that in recent years the newly adopted Conventions are fully discussed at the Annual Meetings of Federal-Provincial Deputy Ministers of Labour on ILO Questions and at the National Tripartite Meetings. The preparation of the submission to competent authorities takes into account the discussions at these meetings.

## Format of Tabling in Parliament of the Adopted Conventions and Recommendations

Under Article 19 of the ILO Constitution and the Memorandum of the Governing Body, the most important part of the tabling of instruments in Parliament is the statement of governmental policy with respect to the adopted instruments.

Under departmental practice until 1968, the Minister of Labour in the House of Commons and the Government Leader in the Senate made statements, prepared in the Department of Labour in consultation with other departments when relevant.

The length of the statement varied from 1 to 4 double-spaced pages, and dealt with the following issues:

(a) reference to Article 19 of the ILO Constitution and obligations thereunder;

(b) reference to the opinion of the Department of Justice regarding legislative jurisdiction of the instruments tabled;

(c) brief description of the instruments tabled;

(d) brief reference to the degree of compliance in Canada with the adopted instruments;

(e) reference to consultations with provinces regarding implementation and to the prospect of ratification (in the case of Conventions).

Effective June 1969, a new format of tabling in Parliament was adopted in order to improve our procedure in conformity with ILO requirements.

The new approach consists of the tabling of a bilingual document entitled - "Canadian Position with Respect to Conventions and Recommendations adopted at the _____ Session(s) of the International Labour Conference, Geneva, (date(s) - month(s) and year(s))."

The document consists of the following parts:

Introduction - describing obligations under Article 19 of the ILO Constitution; information regarding the process of consultations with the provinces regarding the implementation of the adopted instruments; general situation in Canada regarding the ratification of ILO Conventions; reference to the opinion of the Department of Justice regarding jurisdiction and to the transmittal of the relevant instruments to provinces.

Conventions and Recommendations Adopted - description of the requirements of each of the Conventions and Recommendations; Canadian situation regarding the degree of implementation; Canadian position regarding the ratification of the adopted Conventions.

Appendix 1 - Texts of the instruments adopted.

Appendix 2 - Text(s) of the opinion of the Department of Justice regarding the appropriate legislative jurisdiction for the instruments adopted.

Appendix 3 - The vote of the Canadian delegates regarding the instruments at the time of their adoption by the ILO Conference.

Appendix 4 - Text of Article 19 of the ILO Constitution.

At the time of tabling, a copy of the document is distributed to each member of Parliament.

Under this new format, the following documents have been tabled:

1. "Canadian Position with Respect to Conventions and Recommendations adopted at the 53rd and 54th Sessions of the International Labour Conference, Geneva, June 1969 and June 1970"

   Tabled in the House of Commons on March 1, 1972, and in the Senate on February 29, 1972.

2. "Canadian Position with Respect to Conventions and Recommendations adopted at the 55th (Maritime) and 56th Sessions of the International Labour Conference, Geneva, October 1970 and June 1971"

   Tabled in the House of Commons on May 7, 1973 and in the Senate on May 15, 1973.

   In 1972, no new Conventions or Recommendations were adopted.

3. "Canadian Position with Respect to Conventions and Recommendations adopted at the 58th Session of the International Labour Conference, Geneva, June 1973"

   Tabled in the House of Commons and in the Senate on July 9, 1975.

4. "Canadian Position on with Respect to Conventions and Recommendations adopted at the 59th and 60th Sessions of the International Labour Conference, Geneva, June 1974 and June 1975"

   Tabled in the House of Commons on April 18, 1978 and in the Senate on April 19, 1978.

5. "Canadian Position with Respect to Conventions and Recommendations adopted at the 61st, 62nd (Maritime), 63rd and 64th Sessions of the International Labour Conference, Geneva, June 1976, October 1976, June 1977, June 1978"

   Tabled in the Senate on May 13, 1980 and in the House of Commons on May 16, 1980.

## The Procedure for Transmission of Instruments to Provincial Governments

Order in Council P.C. 3252 of July 5, 1950 provided that Conventions and Recommendations which, according to the opinion of the Department of Justice, were appropriate under the constitutional system of Canada, in whole or in part, for action by the Governments of the provinces are to be transmitted to the Lieutenant-Governors of each province through the intermediary of the Secretary of State of Canada. Also, the Secretary of State should advise them of the opinion of the Minister of Justice regarding jurisdiction.

At the third Meeting of Deputy Ministers of Labour on ILO Questions in April 1972, a question was raised whether this highly formal procedure still served a useful purpose, since in actual practice (unlike 20 years ago) active federal-provincial consultation on ILO questions (including the implementation of ILO Labour Standards) takes place among Departments of Labour. Eventually, following consultations with the Privy Council Office, External

Affairs and Secretary of State, a consensus was reached that a new procedure be adopted providing for the transmission of the adopted instruments by the federal Minister of Labour to provincial Ministers of Labour and, where relevant, to the provincial Ministers of Intergovernmental Affairs.

This new procedure was put into effect for the first time in July 1973 with regard to the Conventions and Recommendations adopted by the ILO Conference, in October 1970 (Maritime) and June 1971, and has been applied ever since. Finally the new procedure was regularized by Order in Council P.C. 1977 - 552 of March 3, 1977 (see above and Appendix "2").

At present, the letter regarding the submission to the competent authorities sent by the federal Minister of Labour to provincial Ministers of Labour (and Intergovernmental Affairs - when relevant) contains the following:

(a) reference to Article 19 of the ILO Constitution which requires the transmittal to provinces of Conventions and Recommendations regarded wholly or partially within the competence of the provinces, "for the enactment of legislation or other action";

(b) authentic texts of the relevant Conventions and Recommendations;

(c) a copy of the document entitled "Canadian Position..." and the dates of tabling in the House of Commons and in the Senate;

(d) brief description of the contents of the document tabled;

(e) reference to the requirement of Article 19 regarding periodic consultations with the provinces concerning the implementation of the adopted Conventions and Recommendations, and in particular, a reference to the annual meetings of Deputy Ministers of Labour on ILO questions and the consensus reached regarding the degree of implementation of the adopted instruments and what further action might be required to achieve full compliance;

(f) brief explanation of the requirements of the ILO Constitution regarding the adopted instruments concerning "consideration" by and "consultation" with the provinces; and, report to the Director-General of the ILO of any action that may in fact be taken following such "consideration" of the instruments adopted.

## The Procedure for Transmission of the Tabled Document to the Representative Organizations of Workers and Employers

Following the tabling of the document in Parliament and the fulfillment of obligations under Article 23 of the ILO Constitution the document is sent to the following most representative organizations of employers and workers.

Employers:

The Canadian Manufacturers' Association
The Canadian Chamber of Commerce
The Canadian Construction Association
The Railway Association of Canada
The Secretary, Canadian Employers' Committee on the ILO,
c/o The Canadian Manufacturers' Association

Workers:

Canadian Labour Congress
Canadian Railway Labour Association
The Confederation of National Trade Unions

The covering letter, in transmitting the document to workers and employers, contains the following:

- reference to Article 23 of the ILO Constitution;
- reference to the dates of tabling in the House of Commons and in the Senate;
- brief description of the document;
- reference to the transmission to the provinces of the texts of Conventions and Recommendations when relevant to provincial jurisdictions, and of the document tabled in Parliament.

## The Procedure for Informing the Director-General of the ILO of the Action Taken in Submitting the Adopted Instruments to the Competent Authorities

As provided in Article 19, paragraph 7(b)(iii) of the ILO Constitution, and following the tabling in Parliament, the Director-General of the ILO is informed of the measures taken to bring Conventions and Recommendations before the competent authorities (federal and provincial).

The covering letter to the ILO when transmitting the document already tabled in Parliament, contains the following:

- reference to Article 19 of the ILO Constitution and the dates of tabling in the House of Commons and in the Senate of the document entitled "Canadian Position...";

- brief description of the contents of the document tabled;

- relevant copies of debates in the House of Commons and in the Senate with references to the tabling;

- references to the transmission to the provinces of the adopted instruments when relevant to provincial jurisdiction;

- information regarding employers and workers organizations to whom the document tabled was sent under Article 23 of the ILO Constitution.

## Comments and Recommendations Regarding Present Procedure Applied by the Department of Labour

The submission of adopted ILO Conventions and Recommendations to competent authorities is an obligatory procedure under the ILO Constitution and has to take place each time the general conference of the ILO adopts new Conventions or Recommendations. This procedure had been spelled out in more detail and the corresponding constitutional provisions explained, in the Governing Body Memorandum of 1954, as amended in 1980; purely Canadian aspects are regulated by an Order in Council of 1950 as amended in 1977.

The essence of the procedure consists of the time-limit for tabling (12 to 18 months following the adoption of instruments by the ILO) and the form of tabling in Parliament.

Considering these two aspects, the dividing line in the Canadian practice is the year 1968. Up until that time, it seems that the tabling took place within the limit of time (12-18 months) as required by the Constitution. However, the statements made by the Minister of Labour (in the House of Commons) and the government leader (in the Senate) were rather brief and of a very general nature giving hardly any information regarding the situation in Canada with respect to the adopted instruments - particularly regarding the degree of implementation and the policy of the government regarding ratification (in the case of Conventions). But even the government statement at the time of tabling was not always used in the form prepared by the Department. A striking example of this approach was the tabling in 1969 of the instruments adopted in 1968 when the Minister departed from the prepared statement and omitted some information that normally should have been included according to past practice and ILO requirements.

Following the 1969 experience a new approach of tabling was decided upon in the form of a document prepared by the Department of Labour entitled: "Canadian Position with respect to Conventions and Recommendations adopted at...". This format is similar to the format used by some other countries when tabling the instruments, for example Great Britain, Australia. The document contains in a comprehensive form all necessary information as required by the ILO

Constitution, the Memorandum of the Governing Body, and Order in Council P.C. 1977 - 552. The information in the document is not mere generalities but quite specific and the readers (whether members of Parliament, or representative of workers and employers or provincial governments) have a clear assessment of the situation. This document is in the hands of all members of Parliament at the time of tabling, and is later sent to the provinces, workers and employers, and the Director-General of the ILO.

The Minister's role at the time of tabling is reduced to the following statement in the House of Commons: "Mr. Speaker, under Standing Order 41(2), I should like to table a document, in English and in French, outlining the Canadian position with respect to Conventions and Recommendations adopted at the...session(s) of the International Labour Conference at Geneva...."

This new format of tabling is far superior to the practice used up until 1969 and should be continued. The weak point of the present format of tabling is delays which often exceed the maximum delay, prescribed by the Constitution of 18 months following the adoption of Conventions and Recommendations.

Common Causes of Delay

- it takes from two to eight months from the time the request is made to the Department of Justice to receive an opinion on jurisdiction;

- the process of consultation both within and outside the department is time-consuming and causes delays in finalizing the document. It often requires three consecutive drafts which are circulated to all branches and departments concerned before the final draft is prepared and circulated for approval.

Sometimes, in order to clarify the exact meaning and the necessary implementations, the matter has to be referred to the ILO for advice.

- the document has to be translated and the translation checked;

- the document is printed in 600 English copies and 300 French copies;

- adjournment of Parliament, dissolution of the House of Commons, or other aspects of parliamentary procedure, sometimes cause delays;

- some delays are caused by other priorities of the ILO unit.

A combination of pressure and diplomacy exercised on other branches and other Departments might eliminate these delays, and the whole process of submission to competent authorities could be done within the time limit (12-18 months) as prescribed by the ILO Constitution.

Specific Recommendations

1. The present format of tabling of the adopted instruments in Parliament should be continued.

2. Every effort should be made to have the instruments tabled within 18 months following their adoption by the ILO Conference, as required by the ILO Constitution.

3. Copies of the adopted Conventions and Recommendations should be sent immediately (prior to their tabling in Parliament) to provincial Ministers of Labour, and, when relevant to provincial Ministers of Intergovernmental Affairs, asking for comments concerning compliance (or prospects of implementation) regarding matters within provincial jurisdiction. An explanation could be added that such information would be of help to the Federal Minister of Labour when preparing the tabling of instruments in Parliament. Such consultation would be in addition to the general discussion of newly adopted instruments that takes place at the Annual Meetings of Deputy Ministers of Labour on ILO Questions;

4. When transmitting copies of the document tabled in Parliament to workers' and employers' organizations, their comments should be solicited, regarding the degree of compliance and prospects of implementation (in particular by means of collective agreements).

# CHAPTER III

## COMPLAINTS TO THE ILO UNDER CONVENTION NOS. 87 AND 98

### A. Origin and Procedure

The special machinery of complaints to the ILO was created in 1950-51, following an agreement concluded between the ILO and the United Nations Economic and Social Council. It should be distinguished from the examination of complaints in respect to ratified Conventions provided under Article 26 of the ILO Constitution.

The special procedure deals with complaints alleging infringements by governments of two ILO Conventions, namely:

Convention No. 87 - Freedom of Association and the Protection of the Right to Organize, adopted in 1948; and

Convention No. 98 - The Right to Organize and Collective Bargaining, adopted in 1949.

In 1978, the ILO adopted Convention No. 151 - Labour Relations (Public Service). This Convention is supplementary to Convention No. 98 and deals with the right to organize and with procedures for determining conditions of employment in the public service of those categories of public servants engaged in the administration of the State which were excluded from the coverage of Convention No. 98.

It is possible that in the future the special machinery of complaints would be extended to complaints alleging infringements of Convention No. 151 in addition to similar complaints under Convention Nos. 87 and 98.

The complaints are processed and resolved by the Committee on Freedom of Association. The Committee is set up by the ILO Governing Body and is tripartite in character. It is composed of nine regular members and nine substitute members drawn from the government, employers' and workers' groups of the Governing Body. Considering the quasi-judicial nature of the work of the Committee, its members participate in a personal capacity and not as representatives of their respective governments or organizations. The sessions of the Committee are held in private.

The complaints must be submitted either by the governments or by organizations of employers or workers of recognized national or international standing. Further, complaints may be presented against a government whether or not it has ratified the freedom of association Conventions.

When a complaint is received by the Committee on Freedom of Association it is communicated to the government concerned for its observations. The complaining organization is allowed to supply

further information in support of its complaint which likewise is communicated to the government concerned. The Committee may, at its discretion, decide to communicate to the complaining organization the observations received from the government, for comments. If comments are made, the government is given the opportunity to reply to them.

Once in possession of all relevant information, the Committee makes recommendations to the Governing Body. It may recommend to refer the complaint for further investigation to the Fact-Finding and Conciliation Commission. This procedure is rarely used because it requires the consent of the government concerned, except in the cases covered by Article 26 of the ILO Constitution. Alternatively, the Committee may recommend to the Governing Body that the attention of the government concerned be drawn to situations contravening freedom of association Conventions, and indicate what remedial steps should be taken by that government. The Committee may also inform the Governing Body that the complaint was unfounded and no breach of Conventions took place.

The report of the Committee, if approved by the Governing Body, is communicated to the government and to the complainant (or complainants) concerned. When the Committee's findings confirm a breach of a ratified Convention, its report is also communicated to the ILO Committee of Experts on Application of Conventions and Recommendations for further action. The Committee's reports are published in the ILO Official Bulletin.

Since it was set up in 1951, the Committee has dealt with close to 1 000 cases and its decisions have gradually covered most aspects of freedom of association and the protection of trade union rights. Often, when examining a complaint, the Committee makes reference to its previous decisions when the circumstances of the case under examination are similar. In this way, there is a certain continuity as regards the criteria applied by the Committee in reaching its decisions.

B. Past Complaints Against Canada

Case No. 211: Canada - (Newfoundland)

The complaint was submitted to the ILO by the Canadian Labour Congress in a communication dated November 2, 1959 alleging the infringement of trade union rights by the government of Newfoundland. In particular, the complaint referred to the legislation decertifying the International Woodworkers of America locals and the legislation providing for dissolution of certain unions and for the confiscation of their funds where "it appears" that certain circumstances obtain. The complaint was supported by the International Confederation of Free Trade Unions in a letter dated December 23, 1959.

Interim reports by the Committee on Freedom of Association were adopted in 1960 and 1961. The Committee issued its final conclusions at a meeting held in Geneva on November 4 and 5, 1963, following the repeal by Newfoundland of the contested legislation in 1963.

The processing of the complaint took four years.

Involved in the processing of the complaint were:

The Prime Minister,
The Cabinet,
Department of Justice,
Department of External Affairs,
Department of Labour,
The government of Newfoundland (Mr. Smallwood).

Case No. 523: Canada - (Newfoundland and Saskatchewan)

The complaint was presented by the Canadian Labour Congress against the government of Canada (Newfoundland and Saskatchewan).

A communication from the Canadian Labour Congress dated May 18, 1967, alleged that the passing of two pieces of legislation, one in the Province of Saskatchewan (The Essential Services Emergency Act) and one in Newfoundland (The Hospital Employees Employment Act, 1966-67) infringed upon trade union rights in Canada.

The Committee settled both cases following the repeal of the contested legislation by the provinces concerned. In the case of Saskatchewan the Committee settled the matter in 1968, and in the case of Newfoundland, the Committee issued an interim report in 1968 and a final report in 1969.

The federal Departments of Justice, External Affairs and Labour, as well as the governments of Newfoundland and Saskatchewan, were involved in processing the complaints. The Saskatchewan case took one year to settle, and the Newfoundland case almost two years.

Case No. 818: Canada - (Quebec)

The complaint was submitted to the ILO by the Canadian Labour Congress in a communication dated June 24, 1975 and was supported by the International Confederation of Free Trade Unions by a letter of the same date. The complaint alleged an infringement of Convention 87 by a series of legislative amendments introduced in Quebec following the findings of the Cliche Commission of Inquiry into the construction industry in Quebec.

In particular: Amendments to Draft Law No. 24;

Bill No. 29 - respecting the placing of certain labour unions under trusteeship;
Bill No. 30 - to amend the Construction Industry Labour Relations Act (1968, cap.45).

Consideration of the complaint by the Committee on Freedom of Association was adjourned twice. The Committee considered the complaint in detail at its meeting of May 26, 1976, and its report was approved by the Governing Body at its 200th Session, in May-June 1976. The Committee recommended certain steps to be taken by the government of Quebec, particularly regarding the trusteeship imposed on some unions.

The implementation of the Committee's report of May 1976 was further considered at the following meetings of the Committee:

May 1977
November 1977
February 1978
May 1978
November 1978

The processing of this complaint took about 3½ years, and involved the federal Department of Labour and the Quebec Department of Labour and Manpower. The Department of External Affairs was kept informed at least in the initial stages of the procedure before the Committee.

Case No. 845: Canada - (Quebec)

The complaint was submitted by the International Federation of Free Teachers' Union (IFFTU) in a letter dated April 23, 1976. The complainants protested against the adoption by the Quebec National Assembly of a Bill (No. 23) respecting the maintaining of services in the field of education. The Bill was designed to prohibit strikes, slow-downs and lockouts for a period of 80 days in the educational sector (colleges providing general education and vocational training; school boards). The observations prepared by the government of Quebec were sent to the ILO on October 18, 1976.

At its session in November 1976 the Committee decided to adjourn the examination of the complaint. The complaint was again considered (and dismissed) by the Committee in February 1977, and its recommendation to the effect that the complaint did not require any further consideration was approved by the Governing Body in February/March 1977.

The processing of the complaint took less than one year and involved the Federal Department of Labour and the Quebec Department of Labour and Manpower.

Case No. 841: Canada - (Ontario)

The complaint of the Canadian Workers Union (CWU), which related to the Province of Ontario, was contained in a communication dated February 18, 1976. Further information in support of the complaint was transmitted by the CWU in communications dated March 18 and 10 and April 17, 1976. Observations prepared by the government of Ontario were sent to the ILO in a communication dated July 7, 1976.

The complainants alleged (among other allegations) that the government of Ontario was preventing a large number of Canadian trade unionists from breaking away from the "American-controlled" unions by allowing the Ontario Labour Relations Board to deny certification to Canadian unions for the most technical reasons; there were also allegations of dismissal of workers for union activities.

The complaint was considered in November 1976 and an interim report was approved by the Governing Body in November 1976. The government was asked to supply additional information regarding pending issues before the Ontario Labour Relations Board.

At its session held in February 1977, the consideration of the complaint was adjourned since the Committee was still awaiting the information requested in November 1976. After receiving some of the requested information the Committee considered the complaint at its session in May 1977 and, in its report approved by the Governing Body in May/June 1977 asked to be informed of the decision of the Labour Relations Board regarding the dismissal of two workers. Further information was considered by the Committee at its meeting in November 1977, but there is no indication that this complaint proceeded any further. The processing of the complaint took about 1½ years.

Case No. 903: Canada - (Federal Government)

A complaint was presented by the Economists', Sociologists' and Statisticians' Association against the Federal government in a communication dated March 9, 1978, alleging the infringement of trade union rights in Canada. Further information was received from the complainant organization in a communication dated April 17, 1978.

The complaint concerned Bill C-28, an Act to amend the Public Service Staff Relations Act, submitted by the government for a first reading in the House of Commons on March 8, 1978. In particular, it was alleged that the Bill denied freedom of association to a certain category of employees by not including them in the category of "employee" as defined in the Act. The Committee on Freedom of Association, at its meeting in May 1978, decided to adjourn the consideration of the complaint as it had not received the observations by the Government. In its reply (August 16, 1978), the government stated that the Parliament had been prorogued and that, consequently, Bill C-28 was no longer on the order paper and the ground for complaint no longer existed.

The Committee considered the complaint in November 1978, and recognized that the contested provisions of the Bill, if enacted, would be contrary to Convention 87. However, in view of the fact that the Bill in question was no longer on the Order Paper of Parliament, the Committee decided that the case did not call for further examination.

By a letter of January 22, 1979, the Economists', Sociologists' and Statisticians' Association communicated new allegations. The complaint was supported by six Canadian trade union organizations. The Committee on Freedom of Association at its meeting in February 1979, adjourned the consideration of the complaint while awaiting the government's comments, which were forwarded in a letter dated April 26, 1979.

The complainant stated that a new Bill (C-22) had been introduced for first reading in the Canadian Parliament on November 2, 1978, which was even more threatening to the collective bargaining rights of public employees. In its reply dated April 26, 1979, the government stated that the Parliament had recently been dissolved for the purpose of a general election and that consequently Bill C-22 had died on the Order Paper. Thus, the grounds for this complaint no longer existed.

Nevertheless the Committee commented on the Bill that the exclusions from the category of "employee" should be limited to those contemplated in Article 1, paragraph 2 of Convention No. 151 - Labour Relations (Public Service) i.e., to high level employees whose functions are normally considered as policy-making or managerial or to employees whose duties are of a highly confidential nature.

However, noting that the revised Bill was not on the Order Paper of Parliament, the Committee decided, in May 1979, that the case did not call for further consideration.

The processing of the complaint took about one year. On the government side, the Department of Labour and the Treasury Board were involved.

Case No. 893 - Canada - (Alberta)

The complaint was submitted to the ILO by the Canadian Labour Congress in a communication dated November 4, 1977, and by the Canadian Association of University Teachers in a communication dated December 6, 1977.

The complaint referred to the enactment by the government of Alberta of Bill No. 41 known as "The Public Service Employee Relations Act" 1977, ch. 40. In particular, allegations were made that the amended Act introduced a general prohibition of strikes in the public service under extremely severe penalties; discriminated between several occupational groups regarding the right to strike; excluded from the scope of collective bargaining certain specific matters; deprived academic staff of the right to choose whether or not to bargain collectively; and removed the university teachers from the ambit of the Public Service Employee Relations Act as well as from the rights and protection contained in the Alberta Labour Code. Observations prepared by the government of Alberta were communicated to the ILO.

The Committee on Freedom of Association considered the complaint at its meeting in November 1978, and in its interim report the Committee stated:

(a) that prohibition of strikes in the civil service should be confined to services which are essential in the strict sense of the term;

(b) that the government should consider extending the scope of collective bargaining in the civil service to matters relating directly to conditions of employment in the public service; and

(c) that the government should supply information concerning the right to organize and collective bargaining rights of academic staff members of colleges and universities.

In a letter of April 27, 1979, the government of Canada transmitted additional information supplied by the government of Alberta, and the Committee again considered the case at its Session in May/June 1979.

After examining the observations made by the government of Alberta the Committee recommended that the Governing Body:

- note that the members of the academic staff are able to organize and negotiate their conditions of employment collectively, although on an informal basis, and that the government has begun to explore alternative procedures for negotiations;

- confirm its earlier conclusions concerning the right to strike in the public service and again suggest that the government consider the possibility of introducing an amendment to the Public Service Employee Relations Act in order to confine the prohibition on strikes to services which are essential in the strict sense of the term;

- confirm its earlier conclusions regarding the scope of matters that may be referred to arbitration and request the government to review in this light the list of points set forth in section 48(2) of the above-mentioned Act.

Following a communication dated February 28, 1980 from the Canadian Association of University Teachers (CAUT), the Committee on Freedom of Association examined the case at its session in May 1980. The Committee referred to its previous conclusions and, following its recommendation, the Governing Body:

- noted that the members of the academic staff of the colleges and universities of Alberta were able to organize and negotiate their conditions of employment

collectively, although on an informal basis, and that the government had begun to explore alternative procedures for negotiation;

- confirmed its earlier conclusions concerning the right to strike in the public service and again suggested that the government consider the possibility of introducing an amendment to the Public Service Employee Relations Act in order to confine the prohibition of strikes to services which are essential in the strict sense of the term; and

- likewise confirmed its earlier conclusions regarding the scope of matters that may be referred to arbitration and requested the government to review in this light the list of points set forth in the relevant section of the above-mentioned Act.

In addition, the Committee noted that, in its communication of February 28, 1980, the CAUT requested the Committee to recommend a meaningful and reasonable timetable for the conclusion of discussions concerning the alternative procedures for negotiation referred to by the government. The complainant stated that despite meetings between its provincial affiliate and government officials, the outcome was still indefinite. Moreover, the complainant stated that the rights conferred under the Universities Act were, in practice, limited.

The Committee concluded that the new communication contained specific allegations of infringements of trade union rights, already formulated in detail in the original complaint.

As regards the complainant's request for a timetable for discussions between the CAUT and the government, the Committee considered that it is not competent and it is not within its powers to make such recommendations. Nevertheless, the Committee still hoped that the parties concerned would give all the attention called for in its previous conclusions on this case and would try to act in this regard within a reasonable time limit. Subject to the above considerations, the Committee recommended to the Governing Body that this case did not call for further examination.

Processing of the complaint took about 2½ years, and involved the Department of Labour and the Alberta Government.

Case No. 931: Canada - (Federal Government)

The complaint was launched by The World Confederation of Labour in a communication sent to the ILO dated May 10, 1979. Additional information was sent to the ILO by WCL on June 21, 1979 with a set of documents supporting the complaint. Also, a complaint on the same matter was sent by the World Federation of Trade Unions (located in Prague).

Copies of complaints were communicated to the Department of Labour which transmitted them to the Postmaster General on July 11, 1979, for comments. Comments prepared by the Post Office were subsequently transmitted to the ILO.

The summary of the complaint

The original complaint (May 10, 1979) by WCL referred to the conviction of Mr. Jean-Claude Parrot, President of the Canadian Union of Postal Workers, to a three-month jail term, as according to the courts he had not obeyed soon enough the Act of Parliament putting an end to a legal strike of postal workers. In these circumstances the government of Canada had violated ILO Conventions Nos. 87 and 98.

In an additional communication dated June 21, 1979, WCL submitted to the ILO various documents in support of the original complaint, some of which the ILO transmitted to the Department of Labour.

On the basis of the documentation available, various aspects of the complaint could be summarized as follows:

(a) The Canadian government had violated trade union rights recognized under ILO Convention Nos. 98 and 87 by enacting in October 1978 Bill C-8 - "An Act to provide for the resumption and continuation of postal services"[1]. In particular:

(i) the Act suspended the right to strike of the Canadian Union of Postal Workers through back-to-work legislation;

(ii) the Act replaced the method of settling the dispute chosen by the union as entitled by the legislation, i.e., conciliation with the right to strike, and imposed a method the union had not chosen, i.e., compulsory arbitration.

(b) The Canadian government had aggravated the alleged violation of trade union rights as set out in (a) above, by the subsequent prosecution and conviction for a term of three months in jail of the National President of the CUPW Jean-Claude Parrot for defiance of the back-to-work legislation.

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[1] Bill C-8 put an end to the postal strike and required specifically that "the employee organization and each officer or representative of the employee organization shall give notice to the employees that any declaration, authorization or direction to go on strike, declared authorized or given to them before the coming into force of this Act has become invalid by reason of the coming into force of the Act".

The summary of the government submission

The submission made by the government of Canada stressed the following points:

1. Prosecution and conviction of the President of the CUPW was for disobeying Bill C-8 - An Act to provide for the resumption and continuation of postal services (Postal Service Continuation Act).

   Mr. Parrot had made several public statements to encourage the members of the Canadian Union of Postal Workers to defy the federal legislation which required them to return to work. He had called his members back to work only after those members had been given notice by the Deputy Postmaster General that they could be deemed to have abandoned their employment if they failed to return to work on October 26, 1978. He gave notice then, not out of a desire to comply with the law, but to avoid the possible loss of employment by union members.

   Mr. Parrot was charged under section 115(1) of the Criminal Code for willful disobedience of a law passed by the Parliament of Canada (contempt of Parliament).[2] In April 1979, Mr. Parrot was found guilty as charged and sentenced to a term of three months imprisonment. (The conviction is under appeal.)

2. The complainants claimed that Bill C-8 - Postal Service Continuation Act - violated trade union rights under Conventions Nos. 98 and 87 by suspending the right to strike of the Canadian Union of Postal Workers through back-to-work legislation, and by imposing compulsory arbitration.

   The government argued that the Freedom of Association Committee had recognized in its past decisions that there were circumstances where restrictions and even prohibition of strikes were justifiable; the Parliament of Canada had suspended this right to strike as a last resort in circumstances where the public interest demanded it.

   In the past, the Committee on Freedom of Association had agreed that the right to strike could be restricted or even prohibited in the civil service or in essential services because a strike

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[2] S. 115(1) of the Criminal Code reads as follows:

"115. Everyone who, without lawful excuse, contravenes an Act of the Parliament of Canada by willfully doing anything that it forbids or by willfully committing to do anything that it requires to be done is, unless some penalty or punishment is expressly provided by law, guilty of an indictable offence, and is liable to imprisonment for two years".

there could cause serious hardship to the national community. It had also considered that it appeared impossible for large strikes to take place in undertakings constituting key sectors in the life of a country without such hardship arising.

Further, in the past, the Committee had stressed the importance which it attached, whenever strikes in essential services or in the civil service were forbidden or subject to restriction, to ensuring adequate guarantees to safeguard to the full the interests of the workers thus deprived of an essential means of defending their occupational interests; it had also pointed out that the restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration procedures, in which the parties could take part at every stage and in which the awards were binding in all cases on both parties; these awards, once they have been made, should be fully and promptly implemented.

The government submission to the ILO described at great length all hardships caused by the postal strike in 1975 which lasted from October 20, 1975 to December 2, 1975. Another argument used in the government submission in order to justify compulsory arbitration under Bill C-8 was the alleged unfair collective bargaining methods used by the Postal Union.

Decision of the Committee

The Committee on Freedom of Association considered the complaint in May 1980, noting that the complaint had been made by the World Confederation of Labour in two letters dated May 10 and June 21, 1979, and by the World Federation of Trade Unions (WFTU) in a letter dated June 1, 1979. The Government of Canada had sent its observations by a letter received on November 7, 1979.

In its conclusions, the Committee noted that the complainants and the government generally agreed on the description of the events which led to the October 1978, strike of postal workers and the events that followed. The CUPW had launched a strike on October 16 and the government had immediately introduced in Parliament the Postal Services Continuation Act which became law three days later. According to the Committee, the Postal Services Continuation Act restricted the right to strike granted to postal workers under the Canadian legislation; at the same time, the Act introduced a procedure of compulsory arbitration, although the union had opted for the right to strike. In all these circumstances, and despite the fact that certain guarantees were provided, the Postal Services Continuation Act of 1978 did not appear to be conducive to sound industrial relations which should be founded on a predictable and stable framework and on permanent legislation respecting the principles of freedom of association. The Committee, therefore, wanted to be kept informed on the industrial relations situation in the postal service as it has developed after the promulgation of the Postal Services Continuation Act.

Regarding the arrest and prosecution of trade union leaders, the Committee noted that Mr. Parrot was convicted under the Criminal Code and sentenced to three month's imprisonment for contravening an Act of Parliament, but was at liberty pending the hearing of his appeal. The Committee further noted that the court decisions in the case of other CUPW executive members were still being awaited. In this connection, the Committee considered it important to recall that the development of labour relations may be impaired by the adoption of an inflexible attitude in the application of excessively severe sanctions for strike action. Before examining this aspect of the matter, the Committee wanted to be kept informed of the outcome of Mr. Parrot's appeal and of the proceedings against the other CUPW executive members, including the substance of the decisions and the reasons addressed therefor.

Regarding the complainant's allegation that anti-union measures including 10 dismissals and hundreds of suspensions, were taken against the strikers, the Committee noted that the government had not provided specific observations in this connection. The Committee asked to be kept informed of any measures which might be taken in favour of the dismissed or suspended workers.

Regarding the search of trade union premises, the Committee had stated on many occasions that while trade unions, like other associations or persons cannot claim immunity from a search of their premises, such a search should only be made following the issue of a warrant by the ordinary judicial authority when there are reasonable grounds for believing that evidence exists on the said premises material to a prosecution for an offence under the law. The government in this case had supplied a copy of the warrant authorizing a search of the union's premises, issued by the judicial authority in conformity with the principle just indicated.

In these circumstances, the Committee recommended that the Governing Body:

(a) note that the strike in question had been declared in accordance with the Act which was then in force, and that the Postal Services Continuation Act was adopted, according to the government, with a view to ordering postal workers back to work to prevent hardship to the community, since lengthy conciliation proceedings had failed to settle the dispute acceptably for the two parties;

(b) note that the same Postal Services Continuation Act provided for an extension of the previous collective agreement, but imposed for the settlement of that particular dispute a mediation-arbitration procedure which, under the Public Service Employment Act, the union had previously not opted for, and draw the government's attention to the considerations regarding sound industrial relations;

(c) ask the government to keep the Committee informed of the industrial relations situation in the postal sector after the promulgation of the Postal Services Continuation Act, as well as of any measure which might be taken in favour of the dismissed or suspended workers;

(d) note that the president of the Canadian Union of Postal Workers, Mr. Parrot, was at liberty pending the hearing of his appeal scheduled for November 1979, request the government to keep the Committee informed of the outcome of Mr. Parrot's appeal and on the proceedings concerning other executives of the Canadian Union of Postal Workers, including the substance of the decisions and the reasons adduced therefor;

(e) note that the search of trade union premises was carried out with the requisite judicial authorization, based on reasonable grounds for believing that evidence existed on the said premises material to a prosecution for an offence under the law, and decide that this aspect of the case does not call for further examination.

Processing of the complaint took one year and involved the Department of Labour and Canada Post.

C. Pending Complaints against Canada[3]

Case No. 886: Canada - (British Columbia)

Complaint presented by the Canadian Association of University Teachers and the Canadian Labour Congress against the government of Canada (British Columbia).

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The complaint was launched on July 20 and August 19, 1977, by the Canadian Association of University Teachers (CAUT) and the Canadian Labour Congress. The two organizations sent further information in support of their complaint on September 21 and October 6, 1977, respectively. Finally, CAUT sent an additional complaint on March 5, 1980.

Each time, a copy of the complaint was communicated to the government of Canada (Department of Labour) which transmitted the complaint to the B.C. Department of Labour for comments. Likewise, the federal Department of Labour communicated the comments of the B.C. government (Department of Labour) to the ILO.

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[3]This part deals with the cases which were pending before the Committee on Freedom of Association at the time of writing this paper.

Summary of the complaint

The complaint alleged violation of freedom of association in Canada in the province of British Columbia. The original complaint referred to Bill No. 68 (The Notre-Dame University of Nelson Act) submitted to the B.C. Legislature by the government of B.C. In particular, the complaint was against Section 7 which provided for the termination on May 30, 1977 of a collective agreement between the University and the Faculty Association of Notre-Dame University (FANDU) and the termination of the certification under the B.C. Labour Code of Notre-Dame University as bargaining agent for the employees of the university. Further, the complainants alleged that Section 7 would deny FANDU successor rights as provided under the British Columbia Labour Code, thus denying to individual employees, by retroactive legislation, their entitlement to continue employment with the successor employer. To sum up, it was alleged that Section 7 of the Bill would infringe on Convention No. 98 by terminating a collective agreement freely negotiated between FANDU and Notre-Dame University of Nelson. In addition, the complainants alleged that the Bill was in breach of Convention No. 87 (ratified by Canada), in particular Article 2, which guarantees workers the right to establish and to join organizations of their own choosing.

In the course of the dispute the B.C. government withdrew Bill No. 68 and introduced and passed Bill No. 91 (Miscellaneous Statutes Amendment Act) which amended the B.C. Universities Act by providing in s. 80 (a) that "the Labour Code of British Columbia does not apply to the relationship of employer and employees between a university and its faculty members". The complainants alleged that s. 80 (a) of the Universities Act perpetuated the intent of s. 7 of Bill No. 68 (which was withdrawn), and prohibited the unionization of the university teachers and collective bargaining under the B.C. Labour Code, thus contravening ILO Conventions 87 and 98.

Position of the B.C. government

On January 27, 1978, the government (Department of Labour) informed the ILO that the matters at issue in the complaint were the subject of proceedings before the Labour Relations Board and the Supreme Court of British Columbia. The observations of the B.C. Minister of Labour were transmitted to the ILO on April 27, 1979. Essentially, the B.C. government maintained that:

Main Points

(a) Section 7 of Bill 68 - the Notre-Dame University of Nelson Act was not passed by the B.C. Legislative Assembly. Consequently the complaint was unfounded;

(b) the complaint relating to the amendment to the Universities Act (Bill No. 91) to exclude teaching staff from the Labour Code was also without merit;

(c) university faculty members enjoy freedom of association and the right to organize, and their exclusion from the Labour Code, particularly from its certification procedures, does not restrict the right of the university to voluntarily recognize the faculty union and initiate a collective agreement with that union. In fact, it is the practice of all three universities in British Columbia to recognize their respective faculty associations and to bargain with them. There is no legislation restricting the right of university employees to engage in collective bargaining;

(d) neither Convention No. 87 nor Convention No. 98 imposes an obligation on a government to grant certification rights for the purposes of collective bargaining. The government of B.C. considers that, for ILO purposes, the process of voluntary recognition is equivalent to the certification process. Therefore, the exclusion of professors from the Labour Code and its certification process is not in breach of Convention Nos. 87 and 98.

The Committee on Freedom of Association examined the complaint, and submitted its interim report to the Governing Body at its 210th Session - May/June 1979.

The Committee reported that Bill No. 68, which contains s. 7, had not been adopted by the B.C. Legislature. Nevertheless the B.C. government had submitted other Bills to the Legislature, including Bill No. 82 (Colleges and Provincial Institutes Act), which allegedly perpetuate the intent of Section 7 of Bill No. 68. The Committee observed that the government had not yet sent its observations regarding this latter Bill.

Regarding Bill No. 91, purporting to amend the Universities Act, the Committee noted the B.C. government argument that despite the provision of Bill No. 91 the university staff in British Columbia enjoy the freedom of association and the right to organize, and that it is the practice for universities to recognize faculty associations for the purposes of collective bargaining.

The committee also noted that the matters at issue in the complaints are the subject of proceedings before the Labour Relations Board and the Supreme Court of British Columbia. It considered that it would be useful for it to have at its disposal the decisions taken by these two bodies in order to enable it to reach conclusions with full knowledge of the facts.

In these circumstances the committee recommended that the Governing Body:

(a) note that Section 7 of Bill No. 68 has not been adopted by the B.C. Legislature;

(b) request the government;

(i) to send its observations regarding Bill No. 82 (Colleges and Provincial Institutes Act);

(ii) to supply the texts of the decisions of the Labour Relations Board and the Supreme Court of British Columbia regarding the matters dealt within the complaint;

(c) take note of the present report.

Case No. 964: Canada - (Nova Scotia)

The complaint was launched by the Canadian Labour Congress against the government of Canada (Nova Scotia). In a communication dated April 30, 1980, the Canadian Labour Congress alleged violation of ILO Convention Nos. 87 and 98 by the passage and application of Nova Scotia Bill 98 entitled an Act to Amend Chapter 19 of the 1972 Nova Scotia Trade Union Act. The complaint alleged that the introduction of Bill 98 by the government of Nova Scotia developed out of the attempt by the United Rubber Workers, local 1028, to create a union in the plants of Michelin Tire Canada Limited in Granton and Bridgewater, Nova Scotia.

The United Rubber Workers applied for certification of the employees of the Michelin plant in Granton. The Michelin company argued that the appropriate bargaining unit included all the hourly employees at the plants in Granton and Bridgewater. The Labour Relations Board dismissed Michelin's argument and found that the Granton plant was an appropriate unit for collective bargaining. The government of Nova Scotia then introduced Bill 98 which amended the Trade Union Act of 1972 so that employers with more than one business location can only be certified on a multi-location or multi-plant basis. In other words, the complaint alleged, a union must organize all employees of a company within Nova Scotia before an application for certification can be made to the Labour Relations Board. Further, the complaint alleged that this change to the labour law of Nova Scotia, although of general application, effectively prevented the United Rubber Workers from unionizing the Granton plant of Michelin.

Further, the complaint alleged that the labour law of Nova Scotia, after being amended by Bill 98, was contrary to the present situation in the other jurisdictions of Canada which are moving toward the certification of individual units where multi-unit organization is not possible. The complaint noted that the Canada Labour Relations Board and the British Columbia Labour Relations Board have decided in cases that broader based bargaining is achieved after certification, not prior to it. To do otherwise, according to the complaint, is to deny workers their fundamental rights to free

collective bargaining. In this connection, the complaint quoted from the decision of the Canada Labour Relations Board in a case involving the certification of banks on a branch by branch basis:

> "That can be accomplished by this board accepting or fashioning bargaining units that give employees a realistic possibility of exercising their rights under the Code. Too large units in unorganized industries will abort any possibility of collective bargaining ever commencing and defeat this express intention of Parliament. At the same time, this does not mean the board will or should create artificial units based on the extent of organizing..."

Thus, according to the complaint, the Canada Labour Relations Board in this case decided that it must retain the latitude to determine an appropriate bargaining unit. This, according to the complaint, is the present situation in Canada and has been followed by the Ontario Labour Relations Board. Consequently, Bill 98 of Nova Scotia is contrary to the present interpretation of labour law in Canada.

Further, the complaint alleged that the Trade Union Act of Nova Scotia, as amended by Bill 98, was in violation of Articles 2, 8, 10 and 11 of ILO Convention 87 concerning the Freedom of Association and Protection of the Right to Organize which was ratified by Canada.

The complaint quotes Article 2 of Convention 87 as follows:

> "Workers and Employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

With reference to Article 2, the complaint stated that in a number of cases before the Committee on Freedom of Association, the issue had been the right of countries to enact legislation establishing the system of a single trade union, either for each undertaking or for each branch of activity. The Committee on Freedom of Association had associated itself with the view of the ILO Committee of Experts on the Application of Conventions and Recommendations to the effect that while it may be in the interest of workers to avoid a multiplication of trade unions, a unified trade union movement should not be imposed through state intervention by means of legislation. (International Labour Review, Vol. 105 - No. 1 - January 1972 - Page 72). By extension, the complaint added, the government should not legislate to limit the creation of bargaining units in a company. Under Article 2, the government must allow workers to form bargaining units of their own choosing. Therefore, the complaint alleged that the demand in Bill 98 that the collective bargaining unit, with the minor exceptions in sub-paragraphs 23A(1) a-c, be all the employees in a company was a direct infringement on the right of the workers to choose their own method of organization and thus their right to free collective bargaining.

Further, the complaint alleged that the Bill could also have the effect of imposing a union on the operations of a company. For example, if an employer had a two-plant operation (one employing 100 people and the other 30), and a union signed up 80 employees in the larger plant, it would, under Bill 98, become certified as the bargaining agent for both plants. This would have the result of limiting the freedom of association of the employees in the smaller plant.

Further, the complaint referred to Articles 8, 10 and 11 of Convention 87:

> Article 8: "The law of the land shall not be such as to impair, nor shall it be applied as to impair, the guarantees provided for in this Convention."
>
> Article 10: "In this Convention, the term organization means any organization of workers and employers for furthering and defending the interests of workers and employers."

The complaint alleged that the inability to form small and representative bargaining units severely restricts the ability of a trade union to further and defend the interests of the workers.

> Article 11: "Each member of the ILO for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely their right to organize."

The complaint alleged that the passage of Bill 98 was an attempt by the government of Nova Scotia to prevent the unionization of large multi-plant operations in that province. By forcing unions to disperse their recruiting campaigns over a number of plants during an organizing drive it effectively prevents the unions from organizing these factories. The complaint added that the other jurisdictions of Canada have recognized that forcing trade unions to organize too large units in unorganized industries will prevent the right of workers to organize and bargain collectively.

In the opinion of the complainant, the implementation of Bill 98 is not a law which will ensure workers their rights to organize as in Article 11 but it will prevent them from organizing.

With respect to ILO Convention 98 concerning the Right to Organize and Collective Bargaining (not ratified by Canada), the complaint alleges that Bill 98 is contrary to Article 4 of the Convention which reads:

> "Measures appropriate to national conditions shall be taken, where necessary to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations

and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

According to the complaint, Bill 98 will not promote voluntary negotiations and the reaching of a collective agreement is required by Article 4 of Convention 98. Further, its effect will be exactly the opposite - collective bargaining will not occur because the law has prevented the trade union from organizing the workers.

By a communication dated May 16, 1980, the ILO Office transmitted the CLC complaint to the Minister of Labour for the government's observations on the matter raised therein. As is customary, the federal Department of Labour, by a communication dated July 24, 1980, transmitted copies of the complaint and of the ILO letter to the Nova Scotia Minister of Labour for comments. In a letter dated August 4, 1980, the following observations regarding the CLC complaint were made to the Federal Minister of Labour on behalf of the Nova Scotia government for transmission to the ILO Office in Geneva.

According to Nova Scotia, Chapter 78 of the Acts of 1978-79 (Bill 98) does not, as suggested by the CLC complaint, state that employers with more than one business location require certification on a multi-location basis. The legislation applies solely to employers who are engaged in manufacturing at interindependent plants and permits an application to be made to the Labour Relations Board (Nova Scotia) for a determination as to whether the employees in all the plants owned by such an employer are an appropriate unit for collective bargaining. The impugned legislation defines "interdependent manufacturing location" to mean "a manufacturing location of an employer in the Province, the continued operation of which is primarily dependent on the continued normal operation of another manufacturing location or manufacturing locations of the employer in the Province".

The Nova Scotia government further observed that all jurisdictions recognize factors to be considered in determining the appropriate bargaining unit. Section 24(14) of the Trade Union Act (Nova Scotia) has contained for a considerable period of time, in a manner similar to other provinces, provisions that the bargaining unit shall be determined having regard to the community of interest of the workers in such matters as work location, hours of work, working conditions, and methods of remuneration.

Further, according to Nova Scotia, the Articles in Conventions 87 and 98 referred to in the CLC complaint have not been violated by the provisions of the Nova Scotia legislation.

With reference to Article 2 (quoted above) of Convention 87, according to Nova Scotia, there are no provisions in the legislation which preclude the rights of any person to join organizations of their own choosing. Section 12 of the Nova Scotia Trade Union Act states:

With reference to Article 2 of Convention 87, according to Nova Scotia, there are no provisions in the legislation which preclude the rights of any person to join organizations of their own choosing.

Section 12 of the Nova Scotia Trade Union Act states:

12(1) "Every employee has the right to be a member of a trade union and participate in its activities.

12(2) Every employer has the right to be a member of an employers' organization and to participate in its activities."

According to Nova Scotia, Bill 98 did not amend this provision of the Trade Union Act in any way and the Nova Scotia legislation is not such as to discriminate between particular unions. The concept of trade union unity as opposed to trade union pluralism has not been preferred by the legislation in question and the workers retain their rights to establish or join organizations of their own choosing.

With reference to Article 8 of Convention 87, the Nova Scotia submission quotes both paragraphs of this Article:

"1. In exercising the rights provided for in this Convention, workers and employers and their respective organizations, like other persons or organized collectivities shall respect the law of the land.

2. The law of the land shall not be such as to impair the guarantees provided in this Convention."

According to Nova Scotia, Article 8 is an affirmation of the guarantees provided for in Convention 87; it bespeaks the question in that it requires an impairment of a Convention before it in itself is violated. No guarantee provided in the Convention has been broken and thus the legislation in question does not violate Article 8.

With reference to allegations under Article 10 of Convention 87 (quoted above) according to Nova Scotia this Article would seem to be a definition section with respect to the meaning of "organization". Normally, violations are alleged with respect to substantive and not definitive articles of charters or Conventions. In addition, the meaning accorded to Article 10 in the complaint does not stand up to careful scrutiny in view of the legislation.

With reference to Article 11 (quoted above) of Convention 87, the Nova Scotia government submitted that the legislation which is the subject of the complaint does not prevent workers from exercising their right to organize. The wishes of the majority of the workers can be freely canvassed and their wishes are paramount because the Nova Scotia legislation required a mandatory vote of all employees to determine their wishes with respect to certification and this vote is normally taken within five days after receipt by the Labour Relations Board of the application for certification by the union.

According to Nova Scotia, manufacturing done by one employer is in many instances part of an overall chain of activity. One portion of an assembly line cannot be effectively severed without a disruption of all activities. A single employer and the workers in such an interdependent manufacturing operation are part of a single workplace community. It is accepted that the appropriate bargaining unit is the collective entity rather than many fragmented parts of the activity. If the relatively small population base in relation to the number of the workforce employed requires a physical separation of parts of the activity, it does not alter the basic concept. To fragment the activity would preclude the rule by the majority of the workers.

Further, according to Nova Scotia, the legislation sought to be impugned does not dictate a particular representative trade union among various trade unions. The safeguards which have been suggested by the Committee on Freedom of Association are: (a) certification is made by an independent body; (b) the representative organization is to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certified organization to demand a new election after a fixed period has elapsed since the previous election; and they all exist in the Trade Union Act (Nova Scotia).

According to Nova Scotia, the activities of organizations of workers in meeting with the workers to organize the workforce is not restricted by Bill 98.

With reference to Article 4 (quoted above) of Convention 98, the Nova Scotia government submitted that Section 28 of the Trade Union Act (Nova Scotia), which provides for voluntary recognition, has not been affected by Chapter 78 of the Acts of 1979-80 (Bill 98) and the Nova Scotia legislation makes every attempt to persuade the parties to negotiate on a voluntary basis. The total legislation in Nova Scotia is directed toward bringing the employers and trade unions together on a mutually co-operative basis.

The statement by the Nova Scotia government concluded that the complaints are unfounded. The Trade Union Act (Nova Scotia) clearly shows that workers and employers are free to associate and

are protected as to their rights to organize. Section 12 of the Act supports these rights and is a positive expression of support for the concepts noted in the Conventions.

D. The Role of the Department of Labour in Processing Complaints - Recommendations

The question is what is (or should be) the role of the federal Department of Labour and specifically of the ILO unit in the processing of complaints alleging infringements of Conventions 87 and 98.

When a complaint is submitted to the ILO by a labour organization, the ILO sends a copy of the complaint to the federal Department of Labour for comments on behalf of the Government of Canada. As these complaints quite often deal with alleged infringements of trade union rights in the provinces, the Minister of Labour transmits the complaint to the provincial Minister of Labour for comments. Upon receiving provincial comments the federal Department of Labour transmits them to the ILO as the observations of the Government of Canada. Eventually, the ILO Committee on Freedom of Association considers the complaint. Once the report of the Committee is approved by the Governing Body, it is communicated to the federal Department of Labour which transmits the Committee's report (with the covering letter from the ILO) to the province concerned.

Looking through files of past and pending complaints, the weaknesses of the present approach become obvious.

First: The processing of a complaint by the ILO takes too long. Usually it ranges from a minimum of one year to a maximum of four years (one year being more an exception than a rule);

Second: The examination of the complaint by the ILO is frequently adjourned because of delays in sending government's observations;

Third: Sometimes the observations received from the provinces do not relate to the jurisprudence built up by the cases decided by the Committee on Freedom of Association.

How could the deficiencies of the present approach be remedied?

1. Immediate Measures

(a) The ILO unit in the federal Department of Labour has developed an expert knowledge of ILO Conventions and the jurisprudence of the Committee on Freedom of Association, and should, as a matter of routine, assess critically each complaint presented to the ILO whether or not the complaint relates to federal or provincial jurisdiction. Such analysis should be sent

to the Deputy Minister of Labour, External Affairs and to other departments or agencies to which such analysis might be of interest.

(b) When the complaint relates to provincial legislation, the federal Minister of Labour may consider forwarding the critical assessment to his provincial counterparts at the same time that he sends the actual complaint for comments.

The federal assessment could be accompanied by the ILO publication entitled "Freedom of Association - Digest of Decisions of the Freedom of Association Committee of the Governing Body of the ILO".

The federal brief should draw attention to the principles established by the Committee which appear relevant to the issues raised by the complaint. It should be made clear to the province concerned that the federal assessment is meant only as an assistance. There would be no obligation on provincial authorities to follow such advice.

(c) From past experience in dealing with the provinces on various ILO matters we could assume that the provinces would appreciate having our views on the issues involved without necessarily agreeing with our position. At least we should provide the province with a general approach on how to deal with a given complaint.

(d) In case the federal ILO experts disagree with the provincial comments, the federal Department of Labour could delay the sending of such comments to the ILO. The federal ILO experts could get in touch with the provincial legal services, discuss with them the issues and in this way arrive at mutually acceptable observations which the federal Department of Labour would then transmit to Geneva; however, if no consensus is reached, Labour Canada would have no choice but to submit the views of the province to the ILO.

2. Long-Term Measures

The number of complaints against Canada under Conventions 87 and 98 have increased recently as a result of growing labour and social tensions within our society. Both levels of government are increasingly more inclined to solve labour conflicts by legislative measures which appear to organized labour as unjust and in disregard of trade union rights guaranteed under ILO Conventions.

Within the Canadian constitutional system of parliamentary supremacy there is no constitutional remedy to challenge such legislation in courts, and so long as a given enactment is intra vires of

a given legislature, such legislation is valid. Often the only legal remedy left to trade unions is to challenge such legislation by way of complaints to the ILO Committee on Freedom of Association.

Federal Jurisdiction

One way of improving the present situation would be the introduction of a similar procedure to that introduced by the Canadian Bill of Rights for the purposes of that particular Bill.

The Canadian Bill of Rights, which is a federal piece of legislation reaffirming and guaranteeing basic human rights and freedom, provides that any federal legislation which might affect those basic freedoms should, before being introduced in Parliament, be scrutinized by proper authorities for compatability with the Canadian Bill of Rights.

In a similar way, it is suggested that any federal legislation affecting trade union rights, before being introduced in Parliament, could be sent to the ILO unit in the Department of Labour for an opinion as to whether it would be compatible with ILO Convention No. 87 (ratified by Canada), Convention 98 and with the recently adopted Convention 151 - Labour Relations (Public Service). This last Convention was brought into consideration by the ILO Committee on Freedom of Association when examining the recent complaint against the Federal Government submitted by ESSA. In this connection, it should be mentioned that Convention 151 is a complementary Convention to C-98 insofar as the public service is concerned, and sooner or later the ILO Governing Body will extend the scope of jurisdiction of the Committee on Freedom of Association to complaints submitted under Convention 151.

Provincial Jurisdictions

As regards the provinces, the long-term measures would aim at assisting the provinces in the interpretation of Conventions 87 and 98 (and eventually C-151), and particularly in the ways in which various aspects of these Conventions have been interpreted by the ILO Committee on Freedom of Association and by the ILO Committee of Experts on the Applications of Conventions.

Such knowledge may prevent the enactment of legislation which subsequently becomes subject to ILO complaints.

In this connection, the following steps might be considered:

(a) The provinces should be made acquainted with two ILO publications:

- "Freedom of Association - Digest of Decisions of the Freedom of Association Committee of the Governing Body of the ILO". Second edition - International Labour Office - Geneva. This

publication summarizes the principles established in the cases dealt with by the Committee. The arrangement is made under subject matters dealing with various aspects of interpretation of Conventions 87 and 98.

- "Freedom of Association and Collective Bargaining - General Survey by the Committee of Experts on the Application of Conventions and Recommendations" - International Labour Conference - 58th Session 1973 - Report III (Part 4B) - International Labour Office - Geneva 1973. This survey describes how the ILO Committee of Experts is interpreting various provisions of Conventions 87 and 98.

(b) The briefing papers for the annual meetings of Deputy Ministers of Labour on ILO questions and for the Tripartite meetings should include a chapter dealing with the pending complaints against Canada - and with the questions of implementation of the past decisions of the Committee on Freedom of Association.

(c) The Reports of the ILO Committee on Freedom of Association should be sent first of all (as it is now) to the province directly concerned. In addition, copies of these reports (whether interim or final) should be sent to all other provinces and the federal departments and agencies involved in labour-management relations.

(d) Finally, the ILO liaison officers in the provincial departments of labour should acquire the necessary expertise in ILO matters including the processing of complaints insofar as their respective provinces are concerned. Eventually they should be capable of giving advice regarding the intended provincial legislation affecting trade union rights and the compatibility of such legislation with the provisions of Conventions 87, 98 and 151.

# CHAPTER IV

## CONTRIBUTION TO FORMATION OF INTERNATIONAL LABOUR STANDARDS (ADOPTION OF ILO CONVENTIONS AND RECOMMENDATIONS)

### Introduction

This chapter is concerned with the standard-setting activities of the ILO and Canada's required role in their formulation. It should be emphasized, that the adoption of international labour standards in the form of Conventions and Recommendations is constitutionally the primary and most important part of ILO activities.

Conventions are instruments which are intended, upon ratification, to create binding legal obligations. Recommendations are not open to ratification, but are meant to provide guidance in the development of policy, legislation and practice. Both Conventions and Recommendations have to be adopted by the Conference by a majority of two-thirds of the votes cast by the delegates (Article 19 of the ILO Constitution).

The whole body of Conventions and Recommendations adopted over the years by the International Labour Conference is called "The International Labour Code". That Code now consists of 153 Conventions and 161 Recommendations. The ILO Conventions and Recommendations provide international standards regarding:

Basic human rights
Employment
Conditions of work
Social Security
Industrial Relations
Employment of women
Employment of children and young persons
Seafarers and fishermen
Other special categories of workers
Labour Administration
Tripartite Consultation

### ILO Procedures

The basic rules regarding the adoption of Conventions and Recommendations are contained in the ILO Constitution and the Standing Orders of the International Labour Conference. Items on the agenda of the general Conference, including those pertaining to the formation of labour standards, are decided by the ILO Governing Body (Article 14 of the ILO Constitution). The adoption of Conventions and Recommendations is usually subject to "double-discussion" procedure at two Conferences. In special circumstances, a "single-discussion" procedure at one Conference may be used.

"Double-Discussion" Procedure

Various stages in the double-discussion procedure are regulated by the Standing Orders of the Conference as follows:

- first Report is prepared by the ILO Office describing law and practice in various countries regarding the proposed standards. The Report also contains a questionnaire to which the governments are requested to reply, giving reasons for their replies;

- after receiving governmental replies, the ILO Office prepares a second Report which analyzes the replies and contains "proposed conclusions" to be examined by the Conference during the "first discussion";

- following the first discussion, the ILO Office prepares another Report containing the report of the Conference Committee, discussion in the plenary Session of the Conference, and the "proposed texts" of a Convention and/or Recommendation for the "second discussion" at the next Conference. The governments are asked to suggest amendments or to make comments regarding the proposed texts;

- after receiving governmental comments or amendments, the ILO Office prepares the final Report with the proposed texts to be considered by the Conference during the "second discussion";

- finally, the proposed texts of Conventions and/or Recommendations are submitted to the Conference for adoption in accordance with Article 19 of the ILO Constitution.

Flexibility of Standards

Article 19, paragraph 3, of the ILO Constitution provides that "in framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organizations, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries".

This flexibility is provided by various devices built in the adopted standards such as:

- a Convention could be framed in general terms laying down basic principles, while the accompanying Recommendation would deal with technical or other details of implementation;

- a Convention may consist of a number of parts with a minimum number required for ratification;

- a Convention may permit the acceptance of alternative parts with different obligations;

- a Convention may provide lower standards for developing countries and higher standards for industrialized countries;

- a Convention may allow exclusions from its application of specified categories of occupations or undertakings or insufficiently populated or developed parts of a country;

- a Convention may allow a progressive implementation of its provisions following its ratification, for example Convention No. 100 - Equal Remuneration and Convention No. 111 - Discrimination (Employment and Occupation).[1]

The Governing Body Working Party on International Labour Standards in its Final Report[2] approved the principle of continued use of the flexibility devices developed in the past to ensure that standards represent realistic targets for countries at different levels of development. In addition, new suggestions were made. For instance, Canada suggested the ratification of some Conventions by stages, starting with certain designated industries only or undertakings over a certain size. The Working Party agreed that the Conference might consider a proposal made by the government of Switzerland to follow in appropriate cases, the example of Article 33 of the European Social Charter, which permits the acceptance of certain substantive provisions of that Charter if they are applied to the great majority of the workers concerned through laws, collective agreements or other means. The government considered, in particular, that such a provision might help federal states to ratify Conventions even if the position in certain of their constituent units was not in conformity with all their provisions.

Department of Labour Procedures

Membership in the ILO imposes on Member States an obligation to participate in the process of formation of international labour standards leading to the adoption of ILO Conventions and Recommendations. An active participation of governments (federal, provincial, territorial), and workers' and employers' organizations

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[1]For a more detailed description of ILO procedures regarding the adoption of Conventions and Recommendations - see - "Manual on Procedures Relating to International Labour Conventions and Recommendations" - International Labour Office, Geneva, 1965.

[2]ILO Official Bulletin, Special Issue, Vol. LXII, 1979, Series A.

is necessary in order to adopt international standards which correspond to the needs and reflect the social and economic realities of Member States of the ILO.

The federal Department of Labour is responsible for Canada's contribution to the formation and adoption of the ILO labour standards. Departmental action is in keeping with the various procedural steps taken by the ILO. Usually, it is the "double-discussion" procedure, which takes two years to complete. This consists of three distinctive phases, namely:

ILO Questionnaire
"First Discussion"
"Second Discussion"

1. ILO Questionnaire

The first Report prepared by the ILO Office containing the Questionnaire is sent to Member States 12 months before the opening of the Conference session at which the "first discussion" of the proposed standards will take place. Normally, the report is received in June and the replies have to be sent to the ILO before the end of September. In the case of federal states, the deadline for replies is October 31.

In preparing Canada's replies to the Questionnaire, the following steps are taken:

(a) the ILO Report and the Questionnaire are studied by the ILO unit in the Department;

(b) the ILO Report containing the Questionnaire is sent to all the provinces as well as to workers' and employers' organizations as soon as they are received from Geneva. The accompanying letter indicates that a draft reply to the questionnaire is in preparation and will be forwarded for comments later on;

(c) the reply is drafted.

There is flexibility in the preparation of replies. The ILO unit may take the initiative in preparing the first draft of replies, consulting when necessary other Branches or Departments which may have a direct interest in the subject matter of the Questionnaire; it may ask other Branches or Departments to take the intiative in drafting the replies; the ILO unit may arrange a working party and submit the first draft for consideration; or it may ask the members of the working party to prepare replies to specific parts of the Questionnaire. All these methods have been used depending on the subject matter of the Questionnaire

and the resources available in the ILO unit. The recent trend is to ask experts in other Branches or Departments to take the initiative in drafting the replies.

However, it is the responsibility of the ILO unit to prepare the first draft of replies (giving reasons for replies) in consideration of the suggestions or advice received from other Branches or Departments.

(d) Once the draft replies are finalized by the ILO unit, they are translated into French and sent to the provinces (territories), and workers' and employers' organizations, for comments.

The sending of draft replies for comment to workers and employers is in accordance with the resolution concerning the strengthening of tripartism in the over-all activities of the ILO, adopted by the General Conference in 1971, which requires such consultation before the replies are finalized. It is assumed that the comments received will be reflected in the governments' replies to the Questionnaire. Also, when sending replies to the ILO the governments have to indicate which organizations of workers and employers have been consulted.

The draft replies are sent to the provinces (territories), and to workers' and employers' organizations usually in the second part of September. The deadline for receiving comments is usually set for the middle of October. About the same time, a letter is sent to the ILO Office indicating that Canada's replies will be sent by the end of October, in accordance with paragraph 39(2) of the Standing Orders.

(e) Once the comments are received, the ILO unit may make changes in the proposed replies. In making such changes, it may consult the Branches or Departments concerned (or the members of the working party), and bring to their attention comments and suggestions sent by the provinces, workers and employers.

(f) The governments' replies to the questionnaire as finalized by the ILO unit are sent to the ILO Office before the end of October.

(g) Following the sending of Canada's replies to the ILO, copies of replies are sent for information to:

- provinces (territories) with copies of comments received from other provinces, workers and employers, indicating which replies were

changed as a result of the comments received, and which suggestions were not taken into consideration and why;

- workers and employers indicating which of their comments were taken into consideration in finalizing the replies and which were not accepted and for what reasons. Workers' and employers' organizations do not receive copies of comments received from the provinces;

- members of the working party or to Branches or Departments involved in the preparation of replies, with a "thank you" note for their assistance.

2. "First Discussion"

On the basis of replies to the Questionnaire received from the governments, the ILO Office prepares another Report which is sent to the governments four months before the opening of the Conference session. The Report should reach the governments in February; however, in recent years, the Report is often delayed and received in March.

The ILO Report contains "proposed conclusions" for the "first discussion" by the Conference in June. "Proposed conclusions" reflect the majority views of the governments who answered particular questions. The ILO unit sends the French version of the Report to the Quebec Department of Labour.

Further, the Report is studied in view of preparing the Canadian position regarding the "proposed conclusions" for the "first discussion" by the Conference. The paper in question is submitted by the ILO unit for discussion to the annual meeting of Deputy Ministers of Labour on ILO Questions which is held by the end of April each year. It also forms a part of the documentation submitted to the tripartite meeting held at the same time.

In studying the Report and the "proposed conclusions", the ILO unit pays special attention to the way other countries replied to the Questionnaire, and particularly to those "conclusions" which differ from the position taken by Canada in replying to the Questionnaire. The paper prepared reviews the "proposed Conclusions"; it may indicate the similarity with the Canadian position, but it will stress the differences and suggest the remedial action at the Conference. The paper also indicates the "objectives" which the governments' representatives at the Conference Committee should try to achieve in order to make the emerging instrument(s) acceptable to Canada.

When preparing the Canadian position for the "first discussion", the ILO unit normally consults experts who were involved in the preparation of replies to the Questionnaire. The representatives of the Branches or Departments concerned are usually invited to attend the Deputy Ministers' and the tripartite meetings; and the expert having played the lead role in drafting the reply to the Questionnaire is often invited to present the paper to the meetings.

Following the discussion at the meeting of Deputy Ministers (and at the tripartite meeting), the ILO unit prepares the briefing paper on that agenda item for the Canadian government delegation attending the ILO Conference.

3. "Second Discussion"

Following the "first discussion" by the ILO Conference in June, the ILO prepares another Report which contains extracts from the Report of the Conference Committee, discussion by the Conference in the plenary session, and the "proposed text(s)" of the Convention and/or Recommendation. The governments are required to submit any amendments or comments with regard to the "proposed text(s)" not later than November 30. Governments without amendments or comments to propose are asked to inform the ILO Office by the same date whether they consider that the "proposed text(s)" form a satisfactory basis for the "second discussion" by the Conference. Further, the governments are requested to consult, before finalizing their comments, the representative organizations of workers and employers and to indicate which organizations they have consulted. The result of this consultation should be reflected in the governmental comments. However, only the governmental comments are taken into consideration in the preparation of the final report for the "second discussion".

Normally the ILO Report would be sent to the government by the end of August. Upon receipt of the Report the ILO unit sends the French version to Quebec. About the same time the unit receives the Report prepared by the government representative to the Conference Committee. The ILO unit studies both reports and prepares the draft of the Canadian comments regarding the "first discussion". It may seek the advice of the members of the working party, or of the Branches or Departments that were involved in drafting replies to the Questionnaire.

Once the ILO unit finalizes the draft comments, they are sent with the "proposed text(s)" to provinces (territories), and to workers and employers for their respective comments. The deadline for receiving comments is usually set for the middle of November. On the basis of the comments received, the ILO unit finalizes the Canadian comments; it may consult again those who were involved in the drafting of replies to the Questionnaire. By the end of November, the Canadian government comments regarding the "proposed text(s)" are sent to the ILO Office in Geneva.

Afterwards, copies of Canadian comments are sent for information to provinces (territories) and to workers' and employers' organizations.

The covering letter may indicate the extent of changes made to the original draft as the result of consultations. Provinces (territories) also receive copies of documents received from other provinces. Workers' and employers' organizations do not receive comments made by the provinces.

On the basis of the comments received from the governments, the ILO Office prepares the final Report for the "second discussion". The first part of the Report contains the essential points of governmental observations. The second part contains the proposed text(s) of the Conventions and/or Recommendations amended in the light of the observations made by the governments for reasons set out in the ILO Office commentaries.

According to Standing Orders, this final Report should reach the governments in February. However, often it is received by the governments by the middle of March. Following receipt of the final Report the French version is sent immediately to Quebec.

The ILO unit studies the Report, takes into consideration the Canadian comments, the observations made by other governments and ILO Office commentaries, and prepares a paper for the Canadian position for the "second discussion" by the Conference in June. In preparing this paper, the ILO unit may consult experts in other Branches or Departments concerned. The paper is submitted to the meeting of Deputy Ministers on ILO Questions and to the tripartite meeting, both of which take place by the end of April. The paper is also sent to all those who were involved in various phases of the preparation of the Canadian position. The Branches and Departments concerned are invited to attend the meeting of Deputy Ministers of Labour on ILO Questions and the Tripartite Meeting.

Following the discussion at the meeting of Deputy Ministers and the tripartite meeting, the ILO unit prepares a briefing paper for the Canadian government delegation attending the ILO Conference. Following the "second discussion" the Convention and/or Recommendation needs a majority of two-thirds of the votes cast by the delegates in order to be adopted (Article 19 of the ILO Constitution).

Comments Regarding Present Procedures Applied by the Department of Labour

There are three phases leading to the adoption of international standards in the form of Conventions and Recommendations, namely: ILO Questionnaire, "First Discussion", and "Second Discussion".

Of these three steps, the replies (with reasons for affirmative or negative answers) to the Questionnaire seem to be of crucial importance because they establish the basic approach to the specific provisions of the proposed Conventions and Recommendations. The Questionnaire is the first outline of the proposed standards as viewed by the experts in the ILO Office. The next two steps, namely, "conclusions" submitted for the "first discussion" and the "proposed texts" for the "second discussion" follow the pattern established by the contents of the Questionnaire and by the corresponding replies sent by the governments. Further, the preparation of replies gives an opportunity of reviewing all aspects (national and international) of the intended new international standards.

The ILO Questionnaires are prepared by ILO experts. Under ILO Standing Orders the governments replying to Questionnaires have to give reasons for the replies. In providing such reasons, the governments may be motivated by national or international considerations, or by both.

In preparing the replies, the governments have to consider three aspects:

1. What is the present national position regarding various aspects of the proposed standards? In the case of Canada, it would mean the present state of legislation at the federal and provincial levels, and how the Canadian policy is actually evolving regarding the issues raised in the Questionnaire.

2. What aspects of the proposed standards, at present not implemented by legislative or other measures, should be supported because of their intrinsic value as guidelines for the future evolution of labour and social policy?

3. What are the international aspects of the proposed standards considering the variety of climatic, geographic, social and economic conditions in various parts of the world?

To what extent the replies to the Questionnaire reflect these three considerations depends in great measure on the technique used in the preparation of replies.

With the establishment of the Studies Division (later called International Standards Division) in the ILO Branch of the Department, in 1968 the ILO unit assumed direct responsibility (with the possible exception of maritime standards) for the drafting of replies to the Questionnaire, consulting when necessary the experts in other Branches or Departments, or, by arranging a working party to which the draft replies prepared by the ILO unit were submitted for comments. This procedure imposed more work on the ILO unit but the replies reflected a balance between the Canadian standards actually applied or contemplated, the desirability of accepting long-term goals for the evolution of Canadian policy, and international considerations related to the proposed standards.

Since 1978, the practice has developed of asking experts in Branches or Departments concerned to prepare draft replies to the Questionnaire. The experts may well be acquainted with the Canadian standards on the issues raised by various aspects of the Questionnaire, but they may be less sensitive to international aspects of the proposed standards. In this situation, the prevailing Canadian standards are usually given as reasons for affirmative or negative answers to the Questionnaire. Still, the ILO unit is responsible for the replies and in the present practice it has become more difficult to balance purely Canadian interests or views with long-term policies and international considerations.

To remedy the present situation, there seem to be two alternatives: either the ILO unit should reassume the direct responsibility for drafting replies to the questionnaire; or, take a more critical attitude regarding replies prepared by the experts.

Provincial Involvement in the Formation of ILO Standards

Considering that most of the ILO standards have to be implemented by both levels of government, it became imperative to involve provinces (and territories) in various of the formation of ILO standards. The procedures applied for that purpose and described in this paper seem to be satisfactory on the whole. However there is one aspect of this procedure that could be improved by giving the provinces a better understanding of the international dimension of the standard-setting procedures.

In the course of standard-setting activities the ILO Office prepares various reports. All reports containing a Questionnaire are sent to the provinces immediately upon their receipt by the ILO unit.

Regarding other ILO Reports, the provinces (except Quebec) receive only the texts of the "proposed conclusions" or the "proposed texts" as attachments to the departmental papers prepared for the first and second discussions.

It is recommended that all provinces as well as workers' and employers' organizations should receive all ILO Reports immediately upon their receipt by the ILO unit. In this way, all partners in this co-operative effort regarding the Canadian contribution to the formation of ILO standards would be treated in the same way as Quebec and have an opportunity to be acquainted with the position taken by other countries and the ILO Office regarding the various stages of adoption of international standards.

Recommendations

I recommend that Labour Canada:

(a) continue the present co-operation and involvement of provinces (territories), workers and employers in the process of Canada's contribution to the formation of ILO standards;

(b) take a more critical approach to the replies to the Questionnaires when prepared by experts in the relevant fields in order to achieve a more balanced position between the Canadian standards, long-term social policies and specific international aspects of the proposed standards;

(c) provide all provinces (territories) as well as workers and employers with all ILO Reports relating to the various stages of the adoption of standards immediately after receiving them.

# CHAPTER V

# IMPLEMENTATION AND RATIFICATION OF ILO CONVENTIONS

## Introduction

The treaty-making and treaty-performing powers are the attributes of sovereignty. Only sovereign states, members of the family of nations, have inherent power to negotiate, sign and ratify international treaties thus creating international obligations with respect to other contracting States. This is called the treaty-making power. International obligations formed by ratification have to be implemented by the contracting states and this is called the treaty-performing power. Normally it is the constitution of a country which defines the modalities of the treaty-making and the treaty-performing powers of a State. The relevant constitutional provisions apply to all kinds of international treaties, including the ILO Conventions. Again, it is the constitution of a country which deals with the legal effects of ratification on the internal laws of a given country. In general, there are two approaches to this situation.

### One Approach

Under the Constitution of some countries, ratified international treaties (including ILO Conventions), by virtue of the act of ratification, automatically acquire the force of internal law; using the technical term, the ratified international treaties become ipso facto the laws of the land. In such cases, it may still be necessary to take some additional legislative action to eliminate some discrepancies between the provisions of the ratified treaty and the existing internal legislation. In the case of ratified ILO Conventions, such additional legislative measures may consist of:

- eliminating any conflict between the provisions of the ratified Convention and the existing legislation;

- giving effect to any provisions of the Convention that are not self-executing (for example, provisions requiring certain matters to be regulated by national laws or regulations, or by specific administrative arrangements);

- prescribing penalties where appropriate in the case of non-compliance with the provisions of the Convention;

- ensuring that all interested persons (employers, workers, labour inspection services, the judicial authorities, etc.) are informed of the incorporation of the Convention in the internal law of the country.

Another Approach

Under the constitutions of some countries, the international treaties (including ILO Conventions) do not automatically become the law of the land as the result of ratification but have to be implemented by legislative action to become part of the internal legislation. Under this system, there is a clear distinction between the treaty-making power, that is the power to ratify and create international obligations, and the treaty-performing power, that is the need to incorporate the requirements of a treaty (ILO Convention) by express legislative action by the competent legislative body (or bodies). Without such legislative action, the ratified treaties, while creating international obligations, are not binding internally. This is the British constitutional approach which Canada inherited from British constitutional conventions.

ILO Procedures and Policy Regarding Ratification of ILO Conventions

There is a distinction between ILO Conventions and other international treaties. Normal international treaties are negotiated by the representatives of the governments concerned and signed on behalf of governments by their authorized plenipotentiaries. They become binding international obligations for the countries concerned only after ratification. Such treaties may be bi-lateral or multi-lateral if negotiated and agreed to by the government representatives of several countries.

The ILO Conventions are not negotiated by the governments but are adopted by the ILO General Conference by a two-thirds majority of the votes cast by the delegates representing governments, employers' and workers' organizations attending the ILO Conference, in conformity with Article 19 of the ILO Constitution. An active participation of governments, workers and employers in the adoption of Conventions (as well as Recommendations) is a unique characteristic distinguishing them from other international treaties.

The adopted ILO Conventions are not binding on Member States. They become binding legal obligations for the ratifying country only by the act of ratification. Normally, ratification by two countries is required for entry into force of a Convention as a part of the International Labour Code. The Convention enters into force, that is it creates international obligations, for each ratifying country 12 months after the registration of ratification with the ILO.

Ratification of ILO Conventions

The basic provision regarding the ratification of ILO Conventions is contained in Article 19, paragraph 5(d) of the ILO Constitution which reads:

> "If the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention

to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention;".

This provision refers to three aspects of ratification:

(a) decision to ratify;

(b) communication of the instrument of ratification to the ILO Director-General;

(c) action as may be necessary to make requirements of the Convention part of the law of the country.

Normally, it is the Constitution of a country which contains provisions regarding the proper authority to ratify, modalities of taking such a decision, and the way the international obligations created by the act of ratification are incorporated in the internal law of a country.

The ILO procedures are particularly concerned with the form of communication of the act of ratification, additional statements to be included in or to accompany the ratification, and the inadmissibility of reservations.

The instrument of ratification deposited with the Director-General of the ILO should clearly identify the Convention; it should be signed by a person who has the constitutional authority to act on behalf of the State (for example, Head of the State, Prime Minister, Minister of External Affairs, Minister of Labour); finally, it should indicate clearly that it constitutes the formal ratification of the Convention with reference to Article 19, paragraph 5(d) of the ILO Constitution.

Article 19, paragraph 3, of the ILO Constitution provides for flexibility in framing general Conventions, taking into account the variety of climatic conditions or various degrees of industrial conditions and development. Such flexibility devices are often built into various ILO Conventions. The ratifying country, by a declaration included in or accompanying the act of ratification, may avail itself of such flexibility clauses providing for permissive exclusions, exceptions or options qualifying the obligations assumed by ratification.

Except for flexibility devices included in a Convention, allowing the limitation or qualification of the obligations assumed by ratification, the ratification of Conventions with reservations is inadmissible. The principle that reservations to ratification are not permitted was first formulated by the ILO Office in 1920 and reaffirmed on several occasions. This position was particularly difficult for the federal States where the jurisdiction regarding labour matters is often divided between the federal and provincial authorities.

In 1946, at the ILO General Conference, during the discussion of the wording of Article 19 of the ILO Constitution, the Canadian government representative (Mr. Phelan) raised the possibility of "partial" or "fractional" ratification in the case of federal States. Specifically he referred to the situation where a Convention was implemented by provinces covering 65-70 per cent of the population.[1] His suggestion was not accepted.

In connection with the adoption, in 1949 of Convention No. 97: Migration for Employment - the U.S.A. government raised with the ILO Office the possibility of ratification with a "federal clause", which would mean that the ratification would cover only matters within federal jurisdiction. On July 5, 1950, the ILO Office answered that

> "ratification of a Convention under Article 19 must be unqualified; a federal State which is unable to ratify for constitutional reasons has an alternative procedure open to it but is not entitled to ratify subject to limitations upon its constitutional authority".[2]

It is of particular interest to note that the Working Party on International Labour Standards, in its Final Report[3], agreed "that the Conference might consider a proposal of the government of Switzerland that the example might be followed in appropriate cases of Article 33 of the European Social Charter, which permits the acceptance of certain substantive provisions of that Charter if they are applied to the great majority of the workers concerned through laws, collective agreements or other means. The government considered, in particular, that such a provision might help federal States to ratify Conventions even if the position in certain of their constituent units was not in conformity with all their provisions".

It is notable that the proposal of the government of Switzerland is similar to that put forward by the Canadian government in 1946. It would appear that the time is ripe for the ILO to re-examine the whole issue of "partial" ratification and/or ratification with a "federal clause" by the federal States.

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[1] International Labour Conference, 29th Session, Montreal, 1946, Record of Proceedings, pages 153 and 154.

[2] The International Labour Code, 1951, Vol. 1: Code, pages 1116 and 1117.

[3] ILO Official Bulletin, Special Issue, Vol. LXII, 1979, Series A.

## Canada and Ratification of ILO Conventions

### The British North America Act, 1867

The B.N.A. Act created Canada as a self-governing Dominion within the British Empire. At that time, Canada did not acquire a sovereign status and the Imperial Government in London continued to be responsible for Canada's international relations. Therefore, the B.N.A. Act did not contain any provision regarding the treaty-making powers, which is an attribute of sovereignty. Only one section of the Act dealt with the powers of the Parliament and Government of Canada regarding implementation (performance) of international obligations contracted by the Parliament and Government of Great Britain insofar as such obligations were binding on Canada. The relevant provision, section 132 of the B.N.A. Act, reads as follows:

> "The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries, arising under treaties between the Empire and such Foreign Countries."

At that time, the treaty-making power (that is the creation of binding international obligations affecting Canada) continued to be vested in the Imperial Parliament and Government of Great Britain.

The emergence of Canada as a sovereign country was a gradual process marked by the signing of the Treaty of Versailles, the membership in the League of Nations and the membership in the International Labour Organization. Canada emerged from the First World War as a sovereign member of the international community. However, Canada forced her new international capacities and responsibilities without constitutional provisions regarding the treaty-making and treaty-performing powers that would correspond to her new international status.

The B.N.A. Act created Canada as a federal State dividing the powers of the State between two levels of government, federal and provincial, and assigning exclusive legislative powers to the Parliament of Canada and to provincial legislatures, respectively.

In 1919, as a member of the ILO, Canada took part in the ILO standard setting activities and soon faced the problem of ratification and implementation of ILO Conventions. No doubt, the federal government was aware that following the British constitutional practice, a distinction would have to be made between the ratification, which was an exclusive prerogative of the federal government, and the powers of implementation by legislative measures which would normally follow the constitutional division of powers between the federal Parliament and provincial legislatures. An added element was the use that could be made of Section 132 of the B.N.A. Act, dealing with the federal powers of implementation of Canada's obligations resulting from the treaties concluded between the Empire and foreign countries.

It is significant that the first ratification of ILO Conventions took place in 1926 and dealt with the maritime Conventions, the subject matter of which was within exclusive federal jurisdiction, namely:

Convention No. 7 - Minimum Age (Sea), 1920;

Convention No. 8 - Unemployment Indemnity, 1920;

Convention No. 15 - Minimum Age (Trimmers and Stokers), 1921;

Convention No. 16 - Medical Examination of Young Persons (Sea), 1921.

The Labour Conventions Case (1937)[4]

In 1935 the federal government ratified three ILO Conventions, the subject matter of which was partly within both federal and provincial jurisdictions but primarily within provincial jurisdiction under Section 92(13) of the B.N.A. Act, namely, "Property and Civil Rights in the Province".

The Conventions in question were:

Convention No. 1 - Hours of Work (Industry), 1919;

Convention No. 14 - Weekly Rest (Industry), 1921;

Convention No. 26 - Minimum Wage - Fixing Machinery, 1928.

The same year (1935), the legislation implementing these Conventions and applicable across Canada was enacted by the Parliament of Canada, namely: The Limitation of Hours of Work Act; The Weekly Rest in Industrial Undertakings Act; and, the Minimum Wage Act. The validity of this legislation was challenged in court by Ontario, New Brunswick and British Columbia. Finally, the case reached the Judicial Committee of the Privy Council in London and by a decision rendered on January 28, 1937, the federal statutes implementing these three Conventions were declared ultra vires of the Parliament of Canada.

The decision of the Privy Council is of primary importance, as it dealt with the question of ratification and implementation of the ILO Conventions and international treaties in general within the Canadian constitutional framework and the B.N.A. Act in particular.

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[4]Attorney-General for Canada and Attorney-General for Ontario and others, (1937) A.C. 326.

Considering that the constitutional position established by the judgment of the Privy Council in the Labour Conventions Case is still valid today in Canada's approach to the ratification and implementation of ILO Conventions, it might be useful to describe briefly the arguments and the reasons for the judgment.

The federal government argued that the contested legislation was validly enacted under the legislative powers granted to the federal parliament by the B.N.A. Act. Specifically, this legislation could be justified under Section 132 of the B.N.A. Act (referred to above), or under the general powers, sometimes called residuary powers, granted by Section 91 of the B.N.A. Act to the federal parliament to make laws for peace, order and good government of Canada in relation to all matters not coming within the subjects assigned by the B.N.A. Act exclusively to the legislation of the Provinces. The judgment rejected both arguments.

The judgment admitted that it had not been contemplated in 1867 that the Dominion of Canada would have treaty-making powers, but it stressed that no argument was raised that would question "the international status which Canada had now attained, involving her competence to enter into international treaties as an international juristic person". However, the judgment stressed that it was essential to make a distinction between (1) the formation, and (2) the performance, of the obligations created by a treaty. It pointed out that within the British Empire there is a well established rule that the making of a treaty is an executive act, while the performance of its obligations, if it entails an alteration of the existing domestic law, requires legislative action. The judgment stressed that for the purposes of Sections 91 and 92 of the B.N.A. Act which divided the legislative powers between the Dominion and the Provinces, "there is no such thing as treaty legislation as such". Consequently when a treaty affects a particular class of subjects then the legislative power of performing the treaty obligations is to be ascertained accordingly. The judgment pointed out that the distribution of legislative powers between two levels of government probably constitutes the most essential condition in the "inter-provincial compact" achieved under the B.N.A. Act. Therefore, any claim by the Dominion (federal government) following ratification of a treaty to legislate on matters reserved to provincial legislatures would "undermine the constitutional safeguards of Provincial constitutional autonomy".

In other words, the judgment meant that the federal government, by ratifying ILO Conventions, could not usurp legislative powers granted to the exclusive jurisdiction of the provinces under the B.N.A. Act.

The judgment stressed that the federal executive now has the powers to make treaties and to assume international obligations. However if such obligations affect the classes of subjects within provincial jurisdictions enumerated in Section 92 of the B.N.A. Act,

their implementation is within the competence of the Provincial legislatures only. In other words, "the Dominion cannot merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth".

Regarding ILO Conventions affecting both federal and provincial jurisdictions, the judgment stressed the need for consultation and co-operation with the provinces in order that Canada could not only create, but also fulfill, her international obligations.

Effects of Labour Conventions Case

It should be noted that the decision of the Judicial Committee of the Privy Council did not affect the validity of ratification of the Conventions concerned. Only the implementing federal legislation was declared nul and void as being ultra vires of the federal Parliament.

The 1937 decision was a blow to the federal government. The decision was interpreted that the federal government was only able to ratify ILO Conventions the subject matter of which was within exclusive federal jurisdiction. Regarding ILO Conventions whose subject matter was within federal and provincial jurisdictions, the federal government could not ratify them because it was lacking constitutional powers to implement them on the provincial levels. While this interpretation of the judgment was wrong, it was followed by almost three decades of inaction regarding Conventions partly within federal and partly within provincial jurisdictions.

Between 1935 and 1959, Canada ratified several Conventions the subject matter of which was within exclusive federal jurisdiction, and consequently could be implemented by the legislation passed by the federal Parliament. These Conventions were:

Convention No. 27 - Marking of Weight (Packages Transported by Vessels, 1929, ratified in 1938);

Convention No. 32 - Protection Against Accidents (Dockers) (Revised), 1932, ratified in 1946;

Convention No. 58 - Minimum Age for Employment at Sea, 1936, ratified in 1951;

Convention No. 63 - Statistics of Wages and Hours of Work, 1938, ratified in 1946;

Convention No. 68 - Food and Catering (Ships' Crews), 1946; ratified in 1951;

Convention No. 69 - Certification of Ships' Cooks, 1948, ratified in 1951;

Convention No. 73 - Medical Examination (Seafarers), 1946, ratified in 1951;

Convention No. 74 - Certification of Able Seamen, 1946, ratified in 1951;

Convention No. 88 - Employment Services, 1948, ratified in 1950.

Around 1958, the federal government considered ratification of a Convention whose subject matter according to the Department of Justice was within both federal and provincial jurisdictions. This was the case of Convention No. 105 - Abolition of Forced Labour, adopted in 1957. The Department of Justice took the position that there is no forced labour in Canada, consequently, there was no need for implementing legislation. Following this advice, the federal government ratified Convention No. 105 in 1959.

New Approach Regarding Ratification of Conventions Within Both Federal and Provincial Jurisdictions

At about the same time, the Legislation Branch of Labour Canada reviewed the 1937 decision of the Judicial Committee of the Privy Council in the Labour Conventions Case and came to the conclusion that the judgment did not preclude the ratification of Conventions partly within federal and partly within provincial jurisdictions. What was needed, however, was close consultation and co-operation with the provinces to have the provisions of the Conventions implemented by both levels of government, and then further consultations with the provinces so that the federal government could proceed with ratification.

Soon this new approach was adopted as the government policy regarding the ratification of ILO Conventions subject to consultation and implementation by both levels of government. The purpose of consultation has not only been to secure provincial implementation but also to make provincial governments aware that once a Convention has been ratified the fulfillment of Canada's obligations contracted by the act of ratification would depend on continuous conformity of provincial as well as federal legislation with the provisions of the Convention. Whether this last point was clearly stated is another matter.

At this point, it should be stressed that the provincial concurrence ("consent") to ratification does not restrict in any way the legislative powers of the Provincial legislatures to enact legislation that might be contravening the provisions of ratified Conventions. Under the doctrine of parliamentary supremacy, the sovereignty of the Parliament of Canada as well as the sovereignty of provincial legislatures within their respective fields of power is not affected adversely by the fact of ratification. In exercising their legislative powers, both the federal Parliament and the Provincial legislatures may place the government of Canada in default

of Canada's international obligations resulting from ratification by enacting at any time legislative measures that would encroach on the provisions of ratified Conventions. Such legislation would be valid legislation because, under present Canadian constitutional practice, the courts are not called upon to enforce ratified international treaties, including ILO Conventions, but only to enforce Canadian laws.[5]

Following the process of consultation with the provinces, Canada was able to ratify the following ILO Conventions whose subject matter is within both federal and provincial jurisdictions:

Convention No. 111 - Discrimination (Employment and Occupation), 1958, ratified in 1964;

Convention No. 45 - Underground Work (Women), 1935, ratified in 1966 - N.B. The ratification of this Convention was denounced by Canada in May 1978;

Convention No. 122 - Employment Policy, 1964, ratified in 1966;

Convention No. 87 - Freedom of Association and Protection of the Right to Organize, 1948, ratified in 1972;

Convention No. 100 - Equal Remuneration, 1951, ratified in 1972.

N.B.: To complete the Canadian record of ratification it should be mentioned that in 1967 Canada ratified Convention No. 108 - Seafarers' National Identity Documents, 1958, whose subject matter was within exclusive federal jurisdiction.

The Canadian Procedure Applied to Ratification of ILO Conventions

Regarding the ratification of a Convention the subject matter of which is within both federal and provincial jurisdictions the following procedure has been applied:

1. Consensus of the Deputy Ministers at their Annual Meeting that a given Convention has been implemented in all jurisdictions and in their opinion the Government of Canada should proceed with ratification;

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[5]The possible effects of the proposed Charter of Rights, in the proposed constitutional amendments now under discussion, on the present doctrine of parliamentary supremacy, and the future role of the courts regarding the application of ratified international treaties, is a matter of conjecture and outside the scope of this paper.

2. Consultation between Labour Canada and the Department of Justice as to whether the provisions of the Convention had been implemented in Canada and whether Canada could proceed with ratification;

3. Letter from the Prime Minister to all provincial first Ministers referring to the consensus reached by the Deputy Ministers; asking the First Ministers whether in their opinion the requirements of the Convention have been implemented in their respective provinces; and, if so whether they agree that the federal government should ratify the Convention;

4. Following the consent of all the provinces, a joint submission to the Cabinet is prepared by the Minister of Labour and the Minister of External Affairs including copies of all replies from the provinces and asking for Cabinet consent to proceed with ratification;

5. Following the decision of the Cabinet to ratify, the Department of External Affairs prepares the document of ratification which is presented by the Canadian Ambassador to the European Office of the United Nations in Geneva to the Director General of the ILO.

Canada and Implementation of ILO Conventions

After almost three decades of inactivity in the area of implementation and ratification of ILO Conventions the subject matter of which was within both federal and provincial jurisdictions, the federal Department of Labour developed a comprehensive procedure for studying various Conventions considered relevant to Canada, assessing the degree of compliance in Canada with the requirements of such Conventions, indicating what action would be required in all Canadian jurisdictions to achieve such compliance and, after final consultation with the provinces, proceeding with ratification. This new policy was prompted in great measure by the Canadian Labour Congress and by a growing concern over Canada's poor image abroad due to the lack of a greater number of ratified Conventions.

At a meeting of federal-provincial Ministers of Labour held in Ottawa in March 1964 it was agreed that Canada should seek to ratify more ILO Conventions, the subject matter of which fell within provincial as well as federal jurisdiction. To follow up this matter the Department of Labour formed an ad hoc interdepartmental Committee to review ILO Conventions, to assess the degree of compliance, and to recommend action that would be required to achieve such compliance, leading to the ratification of at least some of the Conventions. The immediate effect of this new policy resulted in ratification by Canada, in November 1964, of Convention 111 - Discrimination (Employment and Occupation).

The ad hoc interdepartmental Committee on Ratification of ILO Conventions met during 1965 and the beginning of 1966. The Committee reviewed several Conventions within both federal and

provincial jurisdictions, as well as some within exclusive federal jurisdiction. The Committee was chaired by Mr. John Mainwaring, then Director of the Labour Department's ILO Branch with representatives of other Branches (including the Legislation Branch), the Departments of External Affairs and Justice and other Departments, depending on the agenda. The work of the Committee contributed in great measure to the ratification in 1966 and 1967 of three Conventions, namely:

Convention No. 45 - Underground Work (Women);

Convention No. 122 - Employment Policy; and

Convention No. 108 - Seafarers' National Identity Documents.

Establishment of Studies Division

By 1966 it had become evident that the process of in-depth review of various ILO Conventions assessing their implementation in Canada and indicating the action required to achieve compliance that eventually would lead to ratification, could not be done on an ad hoc basis. What was needed was the establishment of a special unit in the ILO Branch which would proceed with a systematic evaluation of various ILO Conventions and, in time, develop the necessary expertise to perform this task in a satisfactory manner. This led to the establishment of the "Studies Division" (later called the "International Standards Division" in the ILO Branch). By 1968, the organization of the Division had been completed. It consisted of the Chief of the Division plus one research Officer and a secretary. Under the supervision of the Director of the ILO Branch, the Division assumed direct responsibility for Canada's contribution to the formation of ILO standards (described in another chapter) and for the systematic review of the implementation of ILO Conventions - both old Conventions considered relevant to Canada and new Conventions as adopted each year. Starting in 1970, the results of the studies were regularly presented to the Annual Meetings of the Deputy Ministers of Labour on ILO Questions. Some of the studies were published for the general public, and particularly for the use of federal and provincial governments, trade unions and employers' organizations.

The studies of Conventions prepared either for publication or for the meetings of Deputy ministers on ILO Questions followed similar patterns:

1. Main requirement of the Conventions;

2. Degree of implementation (compliance) in each jurisdiction in Canada;

3. Action required in each jurisdiction to achieve compliance with the Conventions.

Regarding the list of publications - see Appendix 3.

Regarding reports on Canada's compliance with ILO Conventions presented to the Annual Meetings of Deputy Ministers on ILO Questions - see Appendix 4.

## Comments Regarding Canadian Approach to Ratification and Implementation of ILO Conventions

### Ratification

#### General Comments

The ratification of ILO Conventions is the ultimate aim of the ILO standard setting activities. The act of ratification creates binding international obligations, but such obligations would remain empty international promises without ILO supervisory procedures. The ILO is unique among international agencies by applying, since its creation, effective enforcement and supervisory procedures which include complaints of non-observance under Articles 24, 25 and 26 of the ILO Constitution; complaints to the Freedom of Association Committee under Conventions 87 and 98; regular reporting on law and practice implementing ratified Conventions; assessing these reports by the ILO Committee of Experts; discussing the deficiencies of application by the Conference Committee on Application of Conventions and Recommendations with its sanctions of "special list" or "special paragraph" singling out the delinquent countries. This procedure is further supplemented by the so-called "direct requests" sent to various countries pointing to minor deficiencies in compliance or asking for further clarifications which have to be answered in the next report sent to the ILO. Further, the ILO introduced the procedure of "direct contacts" by which at the request of a country an expert is sent from the ILO Office to re-examine the legislation and to suggest the necessary measures to achieve compliance. The ILO supervisory bodies are not only concerned with legislative measures but also with actual practice in applying ratified Conventions. Here, of primary importance, are comments sent to the governments or to the ILO Office directly by organizations of workers and employers regarding the actual application of ratified Conventions.

The procedures applied by the ILO supervisory bodies may not be immediately successful (for example, application of human rights Conventions by totalitarian countries) but the ILO is persistent in pointing out deficiencies and eventually forcing the delinquent countries to fulfill their obligations.

A twofold lesson is to be learned from the supervisory procedures applied by the ILO:

1. A country should know exactly what are the requirements of a given Convention;

> contrasted with that arising under the Forced Labour Convention, 1930, (No. 29), which, in addition to requiring ratifying States "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period", also provides (Article 25) that "the illegal exaction of forced labour or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and strictly enforced." In the light of these provisions the Committee of Experts has always insisted that countries bound by Convention No. 29 must have appropriate penal provisions to punish illegal exaction of forced labour."

The position of the ILO Office is clear. Upon ratification, Article 25 of the Convention would have to be implemented by a provision in the Criminal Code to the effect that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and including appropriate and specific penalties. The ILO Survey (referred to above) confirms this position by stating in paragraph 84:

> "In order to ensure the effective observance of the forced labour Conventions, not only must all provisions for the imposition of forced or compulsory labour contrary to these instruments be eliminated from national legislation, but guarantees must also be established against any practices of compulsion to work. For this purpose the Forced Labour Convention provides (Article 25) that the illegal exaction of labour shall be punishable as a penal offence and that the government must ensure that the penalties imposed by law are really adequate and are strictly enforced."

In conclusion it is submitted that Canada could not ratify Convention No. 29 without providing in the Criminal Code that forced or compulsory labour is a penal offence punishable by appropriate and specific penalties.

The Question of Possible Denunciation of Convention No. 1 - Hours of Work (Industry)

This Convention was one of three Conventions ratified in 1935 and whose implementing federal legislation was declared ultra vires in the Labour Conventions Case (1937) referred to in this paper. While the decision of the Judicial Committee of the Privy Council declared the implementing legislation as null and void, it did not question the power of the federal government to ratify this Convention. Following this judgment, Canada could denounce the ratification but did not. So, Canada continued to be bound by the provisions of this Convention. Over the years, legislative measures enacted under federal and provincial jurisdictions have implemented in great measure the requirements of the Convention. Only in some specific circumstances does the legislation exceed the maximum hours of work, and in several jurisdictions the provisions of the Convention regarding overtime are not strictly observed. This situation

has been discussed at the meetings of Deputy Ministers of Labour on ILO Questions and the consensus was that Canada should consider denouncing ratification of this Convention. In 1975, the question of denouncing was submitted to the Tripartite meeting. Mr. Morris, then the President of the Canadian Labour Congress, opposed the denouncing while the employers and provinces were inclined to favour such denunciation. Apparently the question whether Canada should or should not denounce this Convention is still being considered.

The ILO Committee of Experts had been aware of the circumstances of ratification of Convention No. 1 and of the decision in the Labour Conventions Case. Consequently, while sending "direct requests" pointing out deficiencies and hoping for improvement in our legislation, it never made "observations" that would appear in the printed report submitted to the Conference, thus being open to discussion in the Conference Committee on Application of Conventions and Recommendations.

Still, the provinces were often annoyed with "direct requests", and any restrictions in limiting overtime were opposed by the employers' group. Employers felt it was cheaper to pay special rates for overtime than to hire a new worker. Trade unions had been divided on the problem of overtime. Some opposed unlimited overtime, others had no objections. It would seem that in the past with the expanding economy and shortage of labour the limitation of hours of work, while beneficial to the health of workers, could be considered by some as hurting the economy of a country. But in times of unemployment, governments could use the limitation on hours of work as one of the means to provide employment for more people. Finally in its "Final Report on International Labour Standards" (referred to before) Convention No. 1 was relegated to the Third Category as to its importance.

To sum up, there does not seem to be any need for denouncing Convention No. 1. On the contrary, governments concerned could use the obligations under this Convention to adopt more restrictive measures regarding hours of work and by refusing permission for overtime work, create more opportunities for employment.

## Implementation

### General Comments

Following the reassessment at the turn of the sixties of the significance of the Labour Conventions Case it was realized that the implementation of various ILO Conventions must precede their eventual ratification. Also, by the middle of the sixties it was obvious that the complexities of the laws of 11 jurisdictions could not be studied on an *ad hoc* basis, but a special unit had to be formed to study the implementation of various Conventions on a continuous basis, thus forming a tradition and the necessary expertise. Those involved in this process, of necessity, had to have a legal background and be able to operate on three levels of law, namely, labour, constitutional and international. It was obvious that in

difficulties preventing ratification in various countries would provide guidance on whether our reservations were justified. However, the General Survey[8] in paragraph 191 simply stated:

> "The Government of Canada points out that the only problem as regards full compliance with the Convention is the fact that certain important categories of workers (e.g., professional and agricultural workers) are not covered in all jurisdictions by the legislation protecting the right to organize and bargain collectively."

From this statement, the ILO Branch assumed that our reservations regarding ratification of Convention No. 98 were correct. Perhaps the time is ripe to seek further clarification from the ILO. Consequently, it is suggested that Labour Canada should ask the ILO for an informal opinion as to whether present exclusions of certain categories of professional and agricultural workers from the collective bargaining legislation is a valid obstacle to ratification of Convention No. 98 by Canada.

Convention No. 29 - Forced Labour, 1930

The States which ratify the Forced Labour Convention undertake to suppress the use of forced or compulsory labour in all its forms. The Convention defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". For the purposes of the Convention, and under certain conditions, five kinds of work or services are exempted from its definition: compulsory military service, certain civic obligations, certain forms of prison labour, work exacted in emergencies and minor communal services. The definition of forced or compulsory labour and the exceptions to it provided for in the 1930 Convention are the principal provisions of this instrument currently of importance. Finally, the Convention provides that the illegal exaction of forced or compulsory labour must be punishable as a penal offence and that the penalties imposed by law must be really adequate and be strictly enforced (Article 25 of the Convention).[9]

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[8] Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 58th Session, 1973, Report III (Part 4B).

[9] Abolition of Forced Labour, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 65th Session, 1979. This document reviews in detail all provisions of the Convention and should be studied before any decision is made regarding ratification of this Convention.

Reading the Report on Convention 29 sent under Article 19 of the ILO Constitution in 1978, and the letter from the Deputy Attorney General of Canada to Mr. Eberlee, dated July 17, 1979, it would appear that there is no legislation in Canada (whether federal or provincial) that would be in contravention of Convention No. 29.[10] The instances of legislation referred to in the Canadian Report on Convention No. 29 seem to be exempted from the provisions of the Convention. Only one aspect should be checked and that concerns Canadian vagrancy legislation. If by any chance the legislation is forcing people to work, the legislation might be contrary to the Convention. In reviewing the vagrancy legislation, the relevant part of the ILO Survey should be studied (paragraphs 46, 47, 48).

However, acting on the assumption that there is no legislation or practice regarding forced labour in Canada the question arises whether Canada could ratify it without any implementing legislation. The whole issue of ratification without implementing legislation was raised with the ILO Office in 1975 in an exchange of letters between the Department's International Standards Division and the ILO Labour Standards Division.[11] Among others, a reference was made that in 1959 Canada ratified Convention No. 105 - Abolition of Forced Labour on the assumption that there was no forced labour in Canada and, therefore, there was no need for implementing legislation. In its answer the ILO stated, to quote:

> "Your reference to the Abolition of Forced Labour Convention, 1957 (No. 105) seems very apposite. This Convention requires ratifying countries "to suppress and not to make use" of any form of forced or compulsory labour in the five cases enumerated and "to take effective measures to secure the immediate and complete abolition" of any such forced or compulsory labour. As the exaction of forced or compulsory labour for purposes mentioned in Article 1 of the Convention would generally require legislative authority, the Committee of Experts has been concerned that no legislative provisions of this kind existed, but has not insisted on any express legislative prohibition. This situation may be

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[10] In connection with the letter from the Department of Justice two misconceptions should be rectified: 1) Regarding paragraph 2 of Article 1 dealing with the use of forced labour during a "transitional period" the Survey pointed out that "these provisions, which were aimed essentially at certain colonial practices, are hardly ever invoked now a justification for retaining forced or compulsory labour" (paragraph 7 of the Survey); this statement, however, does not affect the general conclusion that the subject matter of the Convention is still within both federal and provincial jurisdictions. 2) According to present ILO procedure, the reservation to ratification suggested by the Department of Justice (i.e., "federal clause") is not admissible.

[11] See Appendices 5 and 6.

> contrasted with that arising under the Forced Labour Convention, 1930, (No. 29), which, in addition to requiring ratifying States "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period", also provides (Article 25) that "the illegal exaction of forced labour or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and strictly enforced." In the light of these provisions the Committee of Experts has always insisted that countries bound by Convention No. 29 must have appropriate penal provisions to punish illegal exaction of forced labour."

The position of the ILO Office is clear. Upon ratification, Article 25 of the Convention would have to be implemented by a provision in the Criminal Code to the effect that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and including appropriate and specific penalties. The ILO Survey (referred to above) confirms this position by stating in paragraph 84:

> "In order to ensure the effective observance of the forced labour Conventions, not only must all provisions for the imposition of forced or compulsory labour contrary to these instruments be eliminated from national legislation, but guarantees must also be established against any practices of compulsion to work. For this purpose the Forced Labour Convention provides (Article 25) that the illegal exaction of labour shall be punishable as a penal offence and that the government must ensure that the penalties imposed by law are really adequate and are strictly enforced."

In conclusion it is submitted that Canada could not ratify Convention No. 29 without providing in the Criminal Code that forced or compulsory labour is a penal offence punishable by appropriate and specific penalties.

The Question of Possible Denunciation of Convention No. 1 - Hours of Work (Industry)

This Convention was one of three Conventions ratified in 1935 and whose implementing federal legislation was declared ultra vires in the Labour Conventions Case (1937) referred to in this paper. While the decision of the Judicial Committee of the Privy Council declared the implementing legislation as null and void, it did not question the power of the federal government to ratify this Convention. Following this judgment, Canada could denounce the ratification but did not. So, Canada continued to be bound by the provisions of this Convention. Over the years, legislative measures enacted under federal and provincial jurisdictions have implemented in great measure the requirements of the Convention. Only in some specific circumstances does the legislation exceed the maximum hours of work, and in several jurisdictions the provisions of the Convention regarding overtime are not strictly observed. This situation

has been discussed at the meetings of Deputy Ministers of Labour on ILO Questions and the consensus was that Canada should consider denouncing ratification of this Convention. In 1975, the question of denouncing was submitted to the Tripartite meeting. Mr. Morris, then the President of the Canadian Labour Congress, opposed the denouncing while the employers and provinces were inclined to favour such denunciation. Apparently the question whether Canada should or should not denounce this Convention is still being considered.

The ILO Committee of Experts had been aware of the circumstances of ratification of Convention No. 1 and of the decision in the Labour Conventions Case. Consequently, while sending "direct requests" pointing out deficiencies and hoping for improvement in our legislation, it never made "observations" that would appear in the printed report submitted to the Conference, thus being open to discussion in the Conference Committee on Application of Conventions and Recommendations.

Still, the provinces were often annoyed with "direct requests", and any restrictions in limiting overtime were opposed by the employers' group. Employers felt it was cheaper to pay special rates for overtime than to hire a new worker. Trade unions had been divided on the problem of overtime. Some opposed unlimited overtime, others had no objections. It would seem that in the past with the expanding economy and shortage of labour the limitation of hours of work, while beneficial to the health of workers, could be considered by some as hurting the economy of a country. But in times of unemployment, governments could use the limitation on hours of work as one of the means to provide employment for more people. Finally in its "Final Report on International Labour Standards" (referred to before) Convention No. 1 was relegated to the Third Category as to its importance.

To sum up, there does not seem to be any need for denouncing Convention No. 1. On the contrary, governments concerned could use the obligations under this Convention to adopt more restrictive measures regarding hours of work and by refusing permission for overtime work, create more opportunities for employment.

## Implementation

### General Comments

Following the reassessment at the turn of the sixties of the significance of the Labour Conventions Case it was realized that the implementation of various ILO Conventions must precede their eventual ratification. Also, by the middle of the sixties it was obvious that the complexities of the laws of 11 jurisdictions could not be studied on an *ad hoc* basis, but a special unit had to be formed to study the implementation of various Conventions on a continuous basis, thus forming a tradition and the necessary expertise. Those involved in this process, of necessity, had to have a legal background and be able to operate on three levels of law, namely, labour, constitutional and international. It was obvious that in

studying and assessing various ILO Conventions we have to be selective. Many of the Conventions were obsolete, some were revised, some needed revision, and some were obviously not relevant to Canada.

About 1970, the ILO Branch, in consultation with other Branches established a list of about 40 ILO Conventions whose subject matter was partly within federal and partly within provincial jurisdiction, and these Conventions became the subject of detailed analysis by the Branch. By then, a pattern of approach had been established. Each study contained three parts: 1) the description of the main provisions of a Convention; 2) the degree of implementation in all jurisdictions; and 3) the action required in each jurisdiction to achieve compliance with a Convention.

The results of these studies were presented to the Annual Meetings of Deputy Ministers of Labour on ILO Questions, which started in 1970 and have continued each year ever since. Also, some studies were published to make the public in general and trade unions in particular aware of the problems. While concentrating on the so-called backlog of old Conventions that seemed to be relevant to Canada, starting with the third meeting of Deputy Ministers (1972), the studies of newly adopted Conventions have been presented each year to the same meetings, as well.

Once the "backlog" of old Conventions had been dealt with, those Conventions of particular importance to Canada were updated each year and references were made to new legislative developments in various jurisdictions improving Canada's compliance with those Conventions. Also, some Conventions reviewed immediately after their adoption were added to this review showing whatever legislation had been adopted following their adoption. In this way, the number of Conventions updated each year is steadily increasing.

The most telling result of the review of implementation of various Conventions was the ratification, in 1972 of two very important human rights Conventions, namely:

Convention No. 87 - Freedom of Association and Protection of the Right to Organize;

Convention No. 100 - Equal Remuneration.

A few other Conventions were brought closer to full compliance with the prospects of ratification in the not too distant future.

This work of reviewing and updating the selected old and new Conventions should continue in the ILO unit, because it is the only way to improve Canada's record of ratifications, and what perhaps is even more important, to improve labour and social conditions in Canada. Those who claim that our Canadian standards are as good as ILO standards overstate their case. Canada can learn a great deal from ILO standards and their application in Canada may in many instances improve safety at work, labour-management relations, and labour and social conditions in general.

Review of the Existing ILO Standards

When reviewing the whole body of ILO Conventions adopted since 1919 in order to select those that could be considered as relevant to Canada, it became obvious that many of them were either obsolete or already revised but still formed part of the International Labour Code. One of the aims of the ILO Branch was to impress on the ILO Governing Body that the International Labour Code should be streamlined, that those Conventions that were superseded by others should be dropped, or simply become obsolete because of changes of time, social conditions and technology.

Largely due to the Canadian initiative the ILO formed a Working Party on "In-Depth Review of International Labour Standards" in 1977. The Final Report was presented to and approved by the Governing Body in March 1979.[12] All existing Conventions and Recommendations were divided into three categories:

(1) existing instruments, ratification and application of which should be promoted on a priority basis;

(2) existing instruments, revision of which would be appropriate;

(3) other existing instruments.

Existing Conventions were placed as follows:

Category 1 - 78
Category 2 - 16
Category 3 - 63

Immediate Targets for In-Depth Study and Eventual Publications

In this category we suggest that two ILO Conventions be considered:

Convention No. 95 - Protection of Wages; and

Convention No. 151 - Labour Relations (Public Service).

Convention No. 95 has been studied by the Studies Division of the ILO Branch since 1969. The first report on the degree of its implementation and the action required to achieve compliance was presented to the Meeting of Deputy Ministers on ILO Questions in 1971. In 1974 the first draft was prepared for publication and sent for comments to provincial governments, and to the ILO for comments and for clarification of certain provisions in terms of the way in which they may be implemented. Since then, any improvement in the

[12] Final Report of the Working Party on International Labour Standards, ILO Official Bulletin, Special Issue, Vol. LXII, 1979, Series A.

application of this Convention has been reported to the Annual Meetings of Deputy Ministers on ILO Questions. It would seem that considering the importance of the Convention and the amount of work done in studying its application in Canada, the time is ripe to finalize the study and to publish it.

Convention No. 151 - Labour Relations (Public Service) adopted in 1978 is supplementary to Convention No. 98 - Right to Organize and Collective Bargaining. Considering the present climate of labour-management relations in the public service a detailed study of the requirements of this Convention, its degree of implementation at the federal and provincial levels, and what action would be required to comply with its provisions, would be most useful to governments, trade unions, employers and the general public.

Besides, as Convention 151 is supplementary to Convention 98 it will eventually be added to Conventions 87 and 98 for the purposes of complaints to the Governing Body Committee on Freedom of Association.

## RECOMMENDATIONS

### 1. Regarding "Partial" or "Federal Clause" Ratification

Canada should propose to the ILO that the ILO Governing Body re-examine the whole issue of "partial" and "federal clause" ratifications by federal States, with reference to the proposal put forward by the Government of Switzerland (Final Report on International Labour Standards).

### 2. Regarding Compliance of Provincial Legislation with Ratified Conventions

The letter from the Prime Minister to the provincial First Ministers asking for their concurrence (consent) to the proposed ratification of a Convention partly within federal and partly within provincial jurisdictions should contain an additional paragraph. This paragraph should clarify that while the provincial consent to ratification does not impair in any way the powers of their respective legislatures to enact any legislation in their respective fields of jurisdiction, the fulfillment of Canada's international obligations contracted by the act of ratification, however, will depend on continuous conformity of provincial legislation with the requirements of the Convention.

### 3. Regarding the Possibility of Ratification of Convention No. 98 - Right to Organize and Collective Bargaining

A letter should be sent to the ILO International Standards Division in Geneva asking for an informal opinion as to whether the present exclusions of certain categories of professional and agricultural workers from collective bargaining legislation is a valid obstacle to ratification by Canada of this Convention.

4. Regarding the Possibility of Ratification of Convention No. 29 - Forced Labour

With reference to a letter dated July 17, 1979, from the Department of Justice to Mr. Eberlee, the General Survey on Abolition of Forced Labour prepared by the ILO Committee of Experts in 1979 should be brought to the attention of the Department of Justice; it should be explained that Canada could not ratify Convention No. 29 without a provision in the Criminal Code to the effect that forced or compulsory labour is a penal offence and providing adequate penalties; the possibility of such an amendment to the Criminal Code should be considered.

5. Question of Denouncing Convention No. 1 - Hours of Work (Industry)

For reasons explained in this paper the ratification of Convention No. 1 should be maintained.

6. Studies of Compliance with ILO Conventions

Studies of compliance in Canada with the selected ILO Conventions should be carried on by the ILO unit on a continuous basis.

7. Study of Convention No. 95 - Protection of Wages

Considering the importance of this Convention and the amount of work done in the past years this study should be finalized and published by the Department.

8. Study of Convention No. 151 - Labour Relations (Public Service)

Considering the present climate of labour-management relations in the public service an in-depth study of this Convention should be made and published by the Department of Labour.

9. Submission of Studies on Compliance with ILO Conventions to the Tripartite Meetings

At present such studies (unless published) are only submitted to the Annual Meetings of Deputy Ministers of Labour on ILO Questions; it is recommended that they should be submitted to the Annual Tripartite Meetings as well.

# CHAPTER VI

## PREPARATION FOR, SERVICING OF, AND ATTENDANCE AT MEETINGS ON ILO MATTERS IN CANADA AND ABROAD

### Introduction

This chapter is concerned with meetings that take place each year, the servicing of which is the responsibility of the ILO unit, namely:

In Canada

(1) Annual Meetings of Deputy Ministers of Labour on ILO Questions;

(2) Annual Tripartite Meetings on ILO Questions;

Abroad

(3) Annual Meetings of the ILO General Conference;

(4) Meetings of the ILO Governing Body;

(5) Meetings of Industrial and Analogous Committees;

(6) Other Meetings.

### ANNUAL MEETINGS OF DEPUTY MINISTERS OF LABOUR ON ILO QUESTIONS

The idea of annual meetings of federal-provincial Deputy Ministers of Labour on ILO Questions was conceived as the main vehicle for provincial involvement in ILO, particularly in the process of the formation of international labour standards and the implementation of ILO Conventions, the subject matter of which is within both federal and provincial jurisdictions.

Annual meetings have been held every year since 1970.

The basic documentation prepared is as follows:

(1) Minutes of the previous meeting submitted for approval;

(2) Briefing papers regarding the agenda items for the coming session of the ILO General Conference;

(3) Review of compliance and action required regarding new Conventions adopted by the last ILO Conference;

(4) Progress reports towards implementation and eventual ratification regarding ILO Conventions reviewed at previous meetings.

In addition, the documentation may include other items as appropriate.

The meetings are chaired by the federal Deputy Minister of Labour. Provinces are usually represented by Deputy Ministers of Labour, Deputy Ministers (or representatives) of provincial Departments of Intergovernmental Affairs, provincial ILO liaison officers, representatives of the departmental ILO unit, representatives of other branches and/or departments involved in the preparation of the briefing papers on technical items on the agenda of the Conference. Usually a representative of the Department of External Affairs gives a review of international issues which may affect the deliberations of the Conference. Meetings usually take place by the end of April or beginning of May.

## Annual Tripartite Meetings on ILO Questions

The annual Meetings of Federal-Provincial Deputy Ministers of Labour which started on a regular basis in 1970 established close co-operation between federal and provincial governments on ILO questions in general, and, in particular, involved both levels of government in the process of formation and implementation of ILO standards. These meetings were of a confidential nature and the minutes of the meetings were prepared in the ILO Branch and distributed on a confidential basis to the attending Deputy Ministers.

Gradually, however, it was felt that workers' and employers' organizations should be officially informed of some aspects of the matters submitted to the Deputy Ministers, particularly regarding the ongoing process of analyzing the implementation in Canada of various ILO Conventions in which workers and employers were particularly interested. This matter was raised in 1974 at the Meeting of Deputy Ministers on ILO Questions but the discussion was inconclusive.

In 1975, the ILO put on the agenda for the first discussion an instrument on the establishment of national tripartite machinery to improve the implementation of ILO standards. On this occasion Labour Canada felt that it was imperative to involve labour and management in the discussion. A document was submitted to the meeting of Deputy Ministers proposing convening a Tripartite Meeting in the fall of 1975. The purpose of the meeting would be:

(1) to inform representatives of labour and management of the progress made in recent years in studies of ILO Conventions and federal-provincial consultation on their implementation;

(2) to consider Canadian action with respect to recently adopted ILO instruments (including their submission to Parliament and to provincial governments, and the prospects for ratification);

(3) to consider the Canadian position with respect to instruments adopted in the past, some of which may be regarded as valid targets for ratification by Canada. A limited number of these instruments might be examined in some depth;

(4) to review in a general way other ILO activities of interest to Canada, including technical co-operation, research and publications.

The first Tripartite Meeting on ILO Questions took place on September 24, 1975.[1] It was composed of governments (Quebec representative as an observer), employers' and workers' representatives. The meeting was also attended by ILO representatives.

The participants discussed the following matters: furthering of ILO work in Canada; ILO Conventions and Recommendations (new approach to International Labour Code); Canadian programs of studies and federal-provincial discussions regarding the implementation of ILO standards; proposed denunciation of ratification of Convention No. 1: Hours of Work (Industry) and Convention No. 45: Underground Work (Women); ILO Industrial Committees, and finally the future Tripartite Meetings on ILO Questions.

It should be mentioned that representatives of workers and employers were very interested in the federal-provincial program of studies regarding the degree of implementation of ILO Conventions in Canada, and the representatives of the workers suggested that these studies and reports should be made available to them. Employers favoured the denunciation by Canada of ratification of Conventions 1 and 45, but the workers expressed reservations, particularly regarding the denunciation of Convention No. 1: Hours of Work. Mr. Morris stated that instead of denouncing this Convention efforts should be made to comply with its provisions. Regarding ILO industrial committees the workers' representatives considered the work of these and similar committees of great importance and favoured the allotment of more governmental resources to improve the implementation in Canada of the conclusions and recommendations of industrial and other similar committtees of the ILO.

Tripartite Meetings on ILO Questions were resumed in 1979 and continued in 1980. By now, it has become an annual event taking place at the same time as the Annual Meetings of Deputy Ministers of Labour on ILO Questions. The documentation presented is the same which is submitted to the Meetings of Deputy Ministers but restricted to the briefing papers on the items on the agenda of the ILO General Conference. Regarding government representation, any Deputy Minister taking part in the Deputy Ministers' Meeting is invited to take part in the Tripartite Meetings. The Quebec Government representatives attend the meetings as observers.

The 1979 Tripartite Meeting[2]

The meeting took place on April 25, 1979. In addition to the discussion of items on the agenda of the ILO Conference, the representatives of the External Affairs Department briefed the

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[1]Regarding the Agenda - see Appendix 7.

[2]Regarding the Agenda - see Appendix 8.

meeting on the political climate likely to prevail at the ILO General Conference; the new situation in the ILO resulting from the USA's eventual return to the Organization was also discussed. Under the item - Other Business, reference was made to the Work of the Conference Committee on Application of Conventions and Recommendations. Mr. Eberlee expressed the hope that the ILO could be made more relevant to Canada. He referred in particular to the introduction of fair labour standards into international trade agreements. He also mentioned that the "Review of Federal Compliance with Selected ILO Conventions" would be a basis for a meaningful exercise in tripartism.

The 1980 Tripartite Meeting[3]

The meeting took place on April 23, 1980. The main topic of discussion was the documentation regarding the technical items on the agenda of the Conference.

Under the item: Other Conference Matters, the discussion covered the consequences of the U.S.A. re-entry in the ILO which took place in February 1980; the progress report of the Working Party on the eventual abolition of "special list" and "special paragraphs" in the Report of the Committee on Application of Conventions and Recommendations; progress on the work of ILO structure; the amendments of the Standing Orders regarding the working of the Conference; the issue of resolutions presented to the Conference; etc.

The document - "Review of Federal Compliance with Selected ILO Conventions" - "Report of a Labour Canada Working Party - March, 1979", was also discussed.

General Comments

For years, the Canadian Labour Congress has pressed the federal Department of Labour to use its resources to proceed on a regular basis with studies of the implementation of ILO Standards in Canada. It could be said that from the trade unions' perspective the implementation and ratification of ILO Conventions has been one of the main purposes of Canada's membership in the ILO. It is significant that at the "first" tripartite meeting in 1975, a large part of the agenda was devoted to the question of studies of implementation of ILO Conventions in Canada; the workers suggested that such studies and reports presented to the meetings of Deputy Ministers should be made available to them. It is notable that whenever a study of the implementation and action required to achieve compliance in Canada with ILO Conventions was published, about 200 copies were usually sent free of charge to workers' and employers' organizations, and often trade unions asked for more.

When the tripartite meeting was reconvened in 1979 its agenda was restricted to the briefing papers on the items on the agenda of the next Conference. The study of the paper on Federal

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[3]Regarding the Agenda of the Meeting - see Appendix 9.

compliance with ILO Conventions was put on the agenda at the following meeting. It is suggested that at future tripartite meetings the documentation presented should not be restricted to briefing papers regarding the agenda items of the ILO Conference, but should also include all documentation and reports regarding studies of old conventions and newly-adopted conventions as to their implementation in Canada.

Recommendation

All documentation (studies, reports) regarding compliance in Canada with respect to newly-adopted ILO Standards and updated progress reports on selected conventions, submitted to the Annual Meetings of Deputy Ministers on ILO Questions, should also be added to the agenda of tripartite meetings.

## ANNUAL ILO GENERAL CONFERENCE

The General Conference of the ILO is one of the three permanent organs of the ILO - the other two are the Governing Body and the International Labour Office responsible to the Governing Body (Article 2 of the ILO Constitution). The meetings of the General Conference are held at least once every year (usually in June). Each Member State is represented by four delegates (two government delegates, one representing workers' organizations and one representing employers' organizations). Each delegate may be accompanied by advisers, not exceeding two in number for each item on the agenda of the meeting (Article 3 of the ILO Constitution). The proceedings of the General Conference are regulated by the relevant provisions of the ILO Constitution and by the Standing Orders of the Conference.

The agenda of the Conference is decided by the Governing Body. It consists of the Report of the Director-General, Program and Budget Proposal and other Financial Questions, and Technical items regarding the adoption of new ILO standards. The work of the Conference is done in plenary session and in various Committees set up by the Conference such as: Selection Committee, Credentials Committee, Conference Drafting Committee, Committee on the Application of Conventions and Recommendations, the Finance Committee of Government Representatives, Resolutions Committee, and other Committees as may be required (for example, Committee on the Structure of the ILO, the Standing Orders Committee).

Briefing for the Canadian Government Delegation

Instructions for the Canadian Government Delegation on the items on the agenda are prepared immediately following the Meeting of Deputy Ministers on ILO Questions and the Tripartite Meeting. Further, during May the ILO unit receives other documentation such as: Report of the Director-General, Reports of the Committee of Experts on Application of Conventions and Recommendations.

The reports have to be studied by the ILO unit. The Report of the Director-General of the ILO, which reviews the ILO activities past and future, serves as a basis for the preparation of a speech

for the Minister of Labour for the plenary session of the Conference. The Reports of the ILO Committee of Experts on reports sent under Articles 19 and 22 have to be studied from the point of view of whether Canada is mentioned in the Committee's "observations" with respect to the implementation of Conventions ratified by Canada. In such an eventuality (which has not happened as yet) the Government Representative on the Committee on Application of Conventions would have to make a statement explaining or defending Canada's position. Also, problems concerning the application of Conventions by other countries have to be studied in order that Canada may take part in the discussion and in order to vote when the matter of compliance is put to a vote by the Committee. Further, the General Survey prepared by the Committee of Experts in connection with the reports sent under Article 19 of the ILO Constitution has to be studied. Usually a general discussion takes place regarding this report and several members of the Committee take part in the discussion.

In addition, reports pertaining to other Committees (Finance, Standing Orders, Structure) and various resolutions presented to the Resolution Committee have to be studied (if available in advance) in order to establish the Canadian Government position regarding such resolutions. Often these resolutions have strong political overtones and in such cases the government delegation has to co-operate closely with the Canadian Ambassador in Geneva (or the members of his staff). Finally, it should be remembered that the General Conference fulfills the function of the Parliament of the ILO and its decisions are supreme.

## Composition of the Canadian Delegation to the General Conference

The delegation is tripartite and composed of government, workers' and employers' representatives. There are four official delegates to the Conference (two government, one workers' and one employers').

Until 1977, one government delegate was the Head of the Canadian Delegation coming from the Department of Labour, and another was the Canadian Ambassador in Geneva. In 1977, the Canadian Ambassador as the second government delegate was replaced by a provincial Deputy Minister in order to give more importance to the provinces, and this approach has been applied ever since. The choice of workers and employers' delegates and advisors is left to the organizations concerned. The Canadian workers' delegate is nominated by the Canadian Labour Congress and the employers' delegate by the Canadian Manufacturers' Association.

The government delegates are assisted by advisors who usually take care of various technical items on the agenda. There are four provincial representatives (one delegate and three advisors). The provincial representation is arranged in consultation with the provinces well ahead of the Conference, taking into consideration the nature of the technical items on the agenda and geographical representation among Canadian provinces.

The size of the government delegation varies. Some of them come from the Department of Labour or other Departments or agencies as well as provinces. Government delegates are assisted by the Officers from the Canadian Embassy in Geneva. The size of the workers' and employers' delegations is usually six of each (one delegate and five advisors). In addition, three to five Members of Parliament accompany the delegation, but they usually attend for two weeks only. The Department of Labour also provides for the Administrative Officer and Secretary/Stenographer.

The total Canadian Delegation at the Conference comes to about 30 persons of whom about five are employees of the Canadian Permanent Mission in Geneva. The ILO unit is usually represented at the Committee on Application of Conventions and Recommendations.

## MEETINGS OF THE GOVERNING BODY

The composition of the Governing Body is like that of the Annual Conference. It is a Tripartite Body and at present consists of 56 persons:

28 representing governments;
14 representing the employers; and
14 representing the workers.

Of the 28 persons representing governments, 10 are permanent members representing States of Chief Industrial Importance. Canada has been a permanent member as one of the States of Chief Industrial Importance since the beginning of the ILO (1919). The remaining 18 government members are appointed for a term of three years and are selected by the government delegates to the Conference, excluding the delegates of the 10 permanent members mentioned above. The persons representing the employers and workers are elected respectively by the Employers' delegates and the Workers' delegates to the Conference for a term of three years (Article 7 of the ILO Constitution). The Governing Body elects from its number a Chairman (usually a person representing the government group) and two Vice-Chairmen, of whom one is a person representing the workers and one a person representing the employers. The Chairman and Vice-Chairmen are elected for one year.

The Governing Body regulates its own procedures and fixes its own times of meetings. The details of the Governing Body procedures are contained in the "Standing Orders of the Governing Body". The Governing Body is the "executive council" of the International Labour Organization.

### Meeting of the Governing Body

The Governing Body meets three times a year:

The March Session;
The May-June Session;
The November Session.

It meets for three days in March and in November. In May-June, the Governing Body meets for three days before the General Conference and for one day after it. All preparatory work for the Sessions of the Governing Body is done by Committees, which meet for one or two weeks before the full meetings of the Governing Body to which reports from the various Committees are submitted.

There are the following Committees of the Governing Body:

(1) Program, Financial and Administrative Committee (Canada is a member of this Committee);

(2) Allocation Committee (Canada is a member);

(3) Committee on Standing Orders and the Application of Conventions and Recommendations (Canada is a member);

(4) Industrial Activities Committee (Canada is a substitute member on this Committee);

(5) Internal Organizations Committee (Canada is a substitute member on this Committee);

(6) Committee on Operational Programs (Canada is a member);

(7) Committee on Freedom of Association;

(8) Committee on Discrimination (Canada is a member).

Agenda and Documentation

The agenda for each session of the Governing Body is drawn up by the Chairman in consultation with the Director-General of the ILO. The agenda is circulated to the members so as to reach them not less than 14 days before the date of the meeting. The relevant documentation should normally have been sent to the members by that time but in practice the documentation is often delayed. The documentation is studied by the ILO unit and position papers are prepared, quite often in consultation with other Departments or federal Agencies.

## MEETING OF INDUSTRIAL AND ANALOGOUS COMMITTEES

One of the means of action of the International Labour Organization is the holding of tripartite meetings for important branches or economic activities, referred to as industrial and analogous Committees. The industrial Committees have two major functions - one relates to international action within the framework of the ILO, and the other relates to national action within the framework of the respective labour and social policies of Member States. There are 10 such Committees and Canada is a member of most of them. On the average, they meet twice a year at about five year intervals. The functioning of the Committees is regulated by Standing Orders for Industrial and Analogous Committees.

Preparatory Work

The document "Purposes and Functions of Industrial and Analogous Committees" adopted by the Governing Body at its 154th Session (March 1963) requires governments to send to the ILO Office, nine months before the next session of each Committee, information concerning the position in their respective countries on the matters dealt with in the Conclusions and Resolutions adopted by the Committee. The information to be provided should be related primarily to the Conclusions and Resolutions adopted at the last session of the Committee, but may also refer to subjects dealt with in the Conclusions and Resolutions adopted at previous sessions insofar as they are considered by the ILO Office to be of current concern.

As a result of a decision of the Governing Body in 1975, the ILO Office provides a questionnaire to assist governments in preparing their replies.

The governments should also provide information concerning the procedure adopted in their countries with a view to giving effect to the Conclusions and Resolutions adopted by the Committee. On the basis of the information obtained from Member States of a Committee the ILO Office prepares a General Report to be submitted to the Committee.

The General Report usually consists of two parts:

(a) action taken by various countries in the light of the Conclusions and Resolutions adopted at the last session of a Committee;

(b) steps taken by the ILO Office to carry out the studies and inquiries proposed by the Committee and other ILO activities related to the field of concern of the Committee.

Meetings and Attendance

Sessions of Industrial Committees take place in Geneva and a session lasts about 10 days. The Member States of a Committee are requested to send a tripartite delegation consisting of two government, two worker and two employer representatives. A government representative is the head of the delegation. The work of the Committee takes place in plenary sessions and in subcommittees. The results of the work is embodied in Conclusions and Resolutions which are submitted to and eventually approved by the Governing Body.

Follow-up Action

In due course, the report of the Committee with Conclusions and Resolutions are sent to the members of the ILO. Upon receipt, the ILO unit sends the report of the Committee with accompanying Conclusions and Resolutions to the national employers' and workers'

organizations, provinces and other federal departments and agencies to whom the work of the Committee might be of interest, together with Governing Body observations, with the view to assessing their effective consideration.

Comments

At present, the role of Labour Canada and of the ILO unit in particular is restricted to the distribution of the Committee report Conclusions and Resolutions to workers' and employers' organizations, provinces and other departments concerned. But there is no follow-up action as to what consideration has been given towards the implementation of Committee's Conclusions and Resolutions.

Immediately prior to the next meeting of the Committee, the ILO unit responds to requests from the ILO to prepare a report regarding the progress made towards the implementation of Conclusions and Resolutions adopted at a previous meeting. It would seem that some action should be taken during the five-year intervals between the meetings of a Committee assessing what progress has been made towards the implementation of Conclusions and Resolutions adopted by the Committee.

Recommendations

(1) Assuming that the Conclusions and Resolutions coming out of an Industrial Committee's meeting are of such a nature as to present valid guidance for the improvement of working and living conditions in Canada, then a system should be developed of monitoring the progress made towards their implementation.

(2) The tripartite delegation for the meeting, after being selected and supplied with the documentation to be discussed by the Committee, should meet in Ottawa to discuss various issues related to the work of the Committee, prior to its departure for Geneva.

Other Meetings

The meetings listed above are those which take place each year and the ILO unit is directly involved in serving them. Apart from those meetings, regional conferences and technical meetings of panels of consultants and meetings of experts play an important part in the ILO programs. Some of these meetings take place periodically (usually at five-year intervals) and some meet on an ad hoc basis.

Regional Conferences

The ILO African, Asian, European and American Regional Conferences each meet at five-year intervals. Canada takes part in the American Regional Conferences which comprise countries of North, Central and South America. The last meeting of the American Region

was in 1979 (Medellin, Columbia) and the previous one in 1974 in Mexico City. The agenda and relevant documentation are decided by the Governing Body and prepared by the ILO Office. Usually, selected topics are of current interest to a particular region. Prior to the meeting of the American Region the ILO unit would have to study the documentation prepared which, considering the disparity of economic and social conditions of the countries involved, may or may not be of particular relevance to Canada. Also the ILO unit may be involved in selecting the Canadian tripartite delegation attending the Conference.

Meetings of Panels of Consultants and Meetings of Committees of Experts

Such meetings may take place periodically (usually at five-year intervals) or on an ad hoc basis. Ad hoc Committees of Experts frequently study problems assigned to them by the Governing Body. Other important ILO Committees which meet periodically include:

- Joint Maritime Commission;
- Committee of Social Security Experts;
- Panels of Consultants, on a variety of subjects, including women workers, young workers, workers education, labour statistics, safety in mines and economic problems.

Of particular importance are meetings of experts in occupational safety and health which result in safety codes or model codes pertaining to various branches of industrial activities. Often these various activities are carried on by the ILO jointly with UNESCO, WHO, FAO, etc.

The involvement of the ILO unit in all these activities is rather marginal. It may sometimes be asked to transmit some technical material to some relevant agency or professional organization for comments and see to it that such comments are sent to the ILO Office in Geneva.

The meetings of various panels of Consultants and Committees of Experts produce reports, safety codes, model codes which are of importance to various sectors of economy, health services, professions (e.g., Teachers) and to various sectors of public administration. These various texts do not have the same character as ILO Conventions and Recommendations; nevertheless, they form a vast body of social policy guidelines and are an important supplement to the International Labour Code.

The real problem facing the ILO unit is to devise a scheme of distribution of this material to the relevant government departments and agencies (on federal and provincial levels), workers, employers, and professional organizations to whom such material is of primary interest.

# PART 3

## Recommended Initiatives

## INTRODUCTION

A full and comprehensive study of ILO relations should take into account and to some degree be guided by Canada's relations with the United Nations and its associated organizations and institutions. Broader considerations of Canada's foreign policy, its changing priorities and thrusts, are bound to affect Canada's relations with international intergovernmental organizations associated with the UN system, including the ILO. However, while the ILO occupies a central position in the international involvement of Labour Canada and several of its clients, it is but one of many international concerns of the Department of External Affairs.

### Relations with External Affairs and Other Departments

Labour Canada has overall responsibility within the Government of Canada for relations with the International Labour Organization. Within the U.N. family of organizations, however, ILO was given responsibility for a number of programs which are outside the jurisdiction of Labour Canada. The Department of Labour has adjusted to this and has developed cooperative arrangements with other Ministries which have an ongoing interest in ILO activities. While occasional friction may arise from time to time, particularly in the preparation of reports and replies to ILO headquarters, the present arrangements seem to be adequate. If anything, the ILO unit in Labour Canada should be largely that of a policy advisor, catalyst, and coordinator amongst operational units within the various branches and departments, with the exception of the responsibility for studies regarding implementation of ILO Conventions, leading to their eventual ratification; it should not attempt to develop a massive research capability of its own. Relations with the Department of External Affairs, however, have in the past engendered certain difficulties. As it is responsible for the totality of Canada's relations with other countries and with the United Nations, it obviously bears some responsibility for Canada's relations with the ILO, particularly on matters which are common to all the other U.N. organizations and institutions. Difficulties have arisen from the Department of External Affairs' paucity of resources devoted to purely ILO matters, and the influence of international and national non-governmental organizations and other factors. Labour Canada, on the other hand, has developed since its very inception a cooperative relationship with workers' and employers' organizations.

One thing is obvious: the two Departments have to maintain a close and cooperative arrangement on ILO matters. This relationship could benefit considerably from the appointment of a Labour Counsellor to the Canadian Mission of the European Office of the United Nations in Geneva. Presumably enjoying the confidence of both Departments, such an Officer could add a new and refreshing dimension to Canada-ILO relations, and do useful work for both departments. Occasional minor irritants between Labour Canada and External Affairs could be easily resolved with goodwill and understanding.

## Broad Political Issues

When I was given the assignment of reviewing Canada-ILO relations, External Affairs was seriously considering a rather massive review of Canada's foreign policy, including our relations with the UN system of organizations. Such an effort could have pinpointed some broad Canada-ILO policy issues, within the framework of an overall foreign policy review. I understand, however, that this was either postponed or abandoned. Not included, therefore, in my study are considerations of such issues as the effect of international conventions on national law and practice, the limits of international jurisdiction, universal or selective applicability of international standards, relations with the Soviet block countries or the Third World, transfer of Canadian skill and technology to poor countries, and other related issues which have a bearing on Canada-ILO relations. They surface in the U.N. and in most other U.N. Agencies, thus deserving a broad overall review. Although ILO differs from other international intergovernmental organizations in that it is tripartite and concerned with social issues, Canada could not take in the ILO political initiatives which differ from those in similarly situated bodies. Consideration of most if not all of these issues is therefore excluded from this limited study.

## Ratification of ILO Conventions

Neither am I including in Recommended Initiatives the question of ratification by Canada of additional ILO conventions, although it is an important issue and deserves continuing scrutiny and some early decisions. There is indeed very little that I could add at this time to the already voluminous studies undertaken by Labour Canada during the past 20 years on ILO Conventions, their ratification and implementation. It has also been a subject of many discussions at CAALL and Deputy Ministers of Labour meetings. The issue facing Labour Canada on ratification and implementation is not so much technical in nature, as political, in part related to some of the significant aspects of federal-provincial relations. There is very little one could add to the subject except to emphasize that the exhaustive comparative studies of the Department in analyzing ILO conventions and recommendations should be kept up to date. Past studies have concluded that several ILO conventions are now ready for ratification by Canada, but for some minor adjustments. With goodwill and cooperation on the part of provincial authorities, Canada could now ratify several additional conventions.

## Continuous Membership in the ILO

After the USA returned to the Organization in 1980 it would really be superfluous to discuss as a viable option Canadian withdrawal from the ILO - an option which appeared to have had some attraction at the time of the USA withdrawal.

It is unrealistic to expect that Canada would contemplate at present, barring any major catastrophic changes in the United Nations, withdrawal from the U.N. or any of its major agencies and institutions.

The U.S.A. listed in its letter of withdrawal four trends which in its view increasingly undermine ILO's ability to carry out its basic aims, namely: The erosion of tripartism; selective concern for human rights ("double standard"); disregard for due process; increasing politicization of the Organization.

In the ensuing debate, both supporters and critics of the move listed some equally good and valid arguments. However, they missed the basic point. The ILO, like the U.N. itself and the other associated agencies, is the political reflection of the changing moods of the majority of the Member States, and not that of its executive officers. The issue to be resolved is whether governments unhappy with majority decisions should remain in the Organization and vigorously pursue their minority point of view, or withdraw. The USA having withdrawn, has now returned to the Organization. In view of this, it is doubtful whether any other Western country will contemplate withdrawal in the near future.

Canada's Objectives - A Proper Balance of Activities

It is clear that Canada will remain a member of the Organization at least in the foreseable future. If so, it may as well try to maximize the benefits of membership and not just do what is absolutely necessary in terms of its constitutional obligations. Unfortunately, the impression given in the past by the group of Industrial Market Economic Countries (IMEC) of which Canada is a member, was too much emphasis on the budgetary aspects of membership, rather than sufficient concern for the programatic excellence of the Organization. Neither were IMEC governments over-active in initiating ILO programs of significance to their own countries. I am suggesting a balanced approach. IMEC countries including Canada, should continue their vigilance in budgetary and administrative matters. They should also ensure that the Organization fulfills its role within the UN family to help Third World countries to so structure their development policies that objectives of social justice and equity are not neglected. However, for the sake of the universal mission of the ILO, and its relevance to industrial countries, it cannot and should not ignore their problems either. A number of initiatives in this latter direction are, therefore, in order.

Limited Initiatives

Mindful of these priorities and the need for a balanced ILO program, I recommend six initiatives. The list could surely be expanded. However, in view of the serious financial constraints presently faced by Labour Canada, I see no practical purpose in recommending new programs requiring significant additional resources.

The recommended initiatives would obviously require some additional support facilities, but at least in the planning and preparatory stages, these could be secured with rather modest budgetary allocations.

Priorities and Staff Requirements

In order to fulfill its mandate as the Department responsible for Canada-ILO relations, Labour Canada has assumed a number of ongoing and continuing tasks, dealt with in the first part, "An Assessment of Present Activities", Based on past performance, Labour Canada would require a staff to look after: Periodic Reports to the ILO; Submissions to Competent Authorities; Complaints to the ILO; Contribution to the Formation of International Labour Standards; Implementation and Ratification of ILO Conventions; and Preparation for, Servicing of and Attendance at meetings on ILO matters in Canada and Abroad. These are staff requirements for tasks which Canada is obliged to fulfill as an ILO Member and is in keeping with Canadian tradition of consultative relations with employers' and workers' organizations, and all the Provinces.

This ongoing work is obviously the first priority of Labour Canada. It includes the obligation of participating in international meetings and Conferences. Should Canada continue as a Member of the Governing Body, it would add an additional burden on limited staff resources.

As a member of long-standing in the ILO, Canada has the opportunity and responsibility to be an active and good citizen in the Organization and in its deliberative and administrative Councils at headquarters. Of equal, if not higher importance, particularly during times of financial constraint, when painful choices have to be made about utilization of scarce resources, are two additional tasks: One, to make the ILO better known and understood in Canada at both the federal and provincial levels and two, in cooperation with other IMEC countries to structure an ILO program of direct value and significance to Canada and Canadians. These are two priorities of the highest order.

My six recommended initiatives address themselves to these additional objectives and priorities.

RECOMMENDATIONS

1. A National Tripartite ILO Committee

One of the important objectives of my review of ILO-Canada relations is how Labour Canada can best communicate with its constituents and, in particular, labour and management, regarding ILO activities in Canada. This is linked to the question of how to make the International Labour Organization better known in Canada. The practical implications of these two related objectives have been of real concern to all those associated with the Organization during the past 60 years.

Logically, the ILO should be one of the better known international, intergovernmental bodies in this country; it is the only one in which non-governmental organizations participate on an equal basis with governments in its deliberative and administrative functions. The very involvement of such large national representative organizations as the Canadian Labour Congress, the Canadian Manufacturers' Association and a host of others, should make the ILO, its program and activities widely known in Canada.

Unfortunately, it is not so. It is true, that literally not a day passes in this country, and elsewhere, without some serious reference to ILO areas of involvement and concern, be it industrial relations, industrial health and safety, freedom of association, equality of opportunity, protection for the young, social security and many others. However, seldom are these issues associated in the public mind with the ongoing activities of the ILO. As a result, the organization suffers from lack of public visibility and public recognition even in comparison with other international organizations similarly situated, such as UNESCO, WHO, FAO, and the United Nations itself.

During my years of intense involvement with the Organization I concluded that part of the problem was the absence of an umbrella unit in Canada devoted exclusively to ILO issues. UNESCO is the exclusive concern of the Canadian Commission for UNESCO, a publicly funded body, with a comfortable budget and staff. The United Nations is promoted by the United Nations Association, with a network of city groups, funded in large part by the Department of External Affairs. The medical profession takes a real interest in the World Health Organization. Organizations, private and public linked to agriculture, promote the Food and Agriculture Organization, which is also supposed to be the responsibility of the Canadian Hunger Foundation.

The International Labour Organization, however, is not the exclusive responsibility of any one entity in Canada; consequently it lacks a central focus for its promotional work. Labour Canada, the Department of External Affairs, the Canadian Labour Congress, the Canadian Manufacturers' Association, are all interested in the ILO, but it is one of many interests, frequently a rather minor one. Ad hoc arrangements to deal with ILO matters are helpful, but as these are not continuous or consistent, the results are seldom effective. Not only Labour Canada, but also the non-governmental sector, workers' and employers' organizations, have the joint responsibility of making the ILO better known in Canada; it should, therefore, become a joint undertaking of all the ILO partners. As a start in that direction, a small, coordinated body, with the full participation of all parties to the ILO effort in Canada, aiming to reach limited objectives, seems to be worthy of immediate consideration.

National Committee and ILO Standards

Proposals for the establishment of an ILO umbrella coordinating committee in Canada have been ventilated in the past, but for a variety of reasons, never implemented. At one point it looked very hopeful, when two factors favoured its formation: the fiftieth anniversary of the ILO in 1969 and the adoption of two ILO instruments by the International Labour Conference in 1976, namely Convention 144, "Convention concerning tripartite consultation to promote the implementation of International Labour Standards" and Recommendation 152, "Recommendation concerning tripartite consultations to promote the implementation of international standards and national action relating to the activities of the International Labour Organization".

The ILO fiftieth anniversary became a rather major event in the history of the United Nations family of organizations, focussing world-wide attention on the ILO during 1969, including Canada. As the anniversary coordinator, charged with the responsibility of helping to mark the event in all ILO Member States, I realized how useful the ILO national committees were in promoting knowledge and understanding of the ILO; as a matter of fact, in countries where such committees existed, like Japan, Taïan, the UK, Sweden, Norway and Denmark, I found a ready-made vehicle to assist in my task of marking the anniversary in an appropriate manner, thus making it a truly national event. One of the recommendations in 1969, after the conclusion of my task as coordinator, was for the ILO Director-General to promote the establishment of such committees in all Member States.

Consequently, the ILO Governing Body in November 1973, decided to place on the agenda of the 1975 Session of the International Labour Conference an item entitled "Establishment of National Tripartite Machinery to Improve the Implementation of ILO Standards". This was done within the framework of ILO activities to promote the effectiveness of tripartite action, both nationally and internationally, in all matters of concern to the ILO.

This initiative of the ILO Governing Body resulted in the adoption in 1976 of Convention 144 and Recommendation 152.

Unfortunately, whether by design or not, the very title of the Convention seems to restrict the area of consultation to that of promoting the implementation of ILO standards. The Recommendation, fortunately, goes beyond that objective, by also referring to "national action relating to the activities of the ILO". It expands on this subject in the text by referring to the tripartite involvement in "the preparation, implementation and evaluation of technical cooperation activities in which the ILO participates". Then, almost as an afterthought, the Recommendation suggests in paragraph 6, "The promotion of better knowledge of the International Labour Organization as an element for use in economic and social policies and

programs". At this point it is well to remember that a Recommendation is not subject to ratification, but is to be used as a guide to national laws and practice, in part or as a whole.

This, basically, is the extent to which my proposal for a national tripartite ILO committee is linked to Convention No. 144 and Recommendation 152. Thus, Labour Canada could proceed with the formation of this committee, regardless of whether it intended to recommend ratification of the Convention or not. It could, however, use Recommendation No. 152 as an added motive.

Ratification of a Convention by Canada is quite a cumbersome procedure, requiring unanimous consent of the provinces and at best a lengthy processof negotiations. Formation of a federal committee to popularize issues relating to conditions of life and work, where the ILO has made a substantial contribution, could proceed without the need of unanimous provincial consent. In any case, the chances of the proposal's acceptance would be enhanced by eliminating reference to the ratification of a Convention.

What Kind of a Tripartite Committee?

Another difficulty encountered in the past was the recurring issue of the formation of an all-inclusive tripartite council or committee dealing with a variety of major social, economic and political questions, which could also deal, inter alia, with ILO matters. As other problems, like industrial relations and national economic objectives, are of such paramount importance and therefore pose formidable difficulties in terms of reaching consensus solutions, past efforts have not been crowned with visible success. In the process, the ILO tripartite effort had no chance of surfacing.

It would seem to me that a national tripartite committee dealing exclusively with ILO questions would not have to face such massive and highly-charged difficulties. Labour Canada as well as employers' and workers' organizations are committed to tripartism within the ILO, are interested in making the Organization and its activities better known in Canada and are already engaged in some ad hoc ILO consultations. A national committee would thus formalize an existing arrangement and add the element of continuity. If subsequent events would justify expansion of its mandate, its jurisdiction could easily be expanded; if not, its limited thrust could still justify its continuing existence.

The 1975 Meeting

A serious effort was made in 1975 to actually launch an ILO tripartite committee. A meeting to consider this question, among others, was held in Ottawa on September 24, 1975, under the chairmanship of the Deputy Minister of Labour, Tom Eberlee. In attendance were five provincial deputy Ministers of labour, six workers' representatives, headed by the then CLC President Joe Morris, and six

employers' representatives headed by Keith Richan. The ILO was represented at that meeting by the then ILO Deputy-Director-General, John McDonald, and myself.

The meeting, according to the invitation, was convened to exchange views and explore the desirability and possibility of the establishment in Canada of some ongoing tripartite machinery for consideration of ILO instruments, preparation for ILO conferences and technical meetings and the promotion generally of ILO work in Canada; this was in line with the ILO instruments, discussed earlier in this paper, at that time in the process of being adopted by the ILO Conference. In my report to the ILO Director-General on this meeting, I noted that "Joe Morris as CLC President, was strongly in favour of the establishment of such machinery and suggested that a tripartite committee on ILO questions be formed soon. Keith Richan, speaking for the employers, saw real value in establishing such a committee. While he warned against turning it into a small conference, he expressed agreement in principle with the suggestion of forming a committee. Tom Eberlee concluded that there was a consensus that Canada should have the means to deal, on a tripartite and continuing basis, with ILO concerns". The chairman, Mr. Eberlee, my report continues, in summing up the day's discussion stated "that Labour Canada will not wait for the outcome of the second discussion at the 1976 Conference on the instruments, before deciding to form a Canadian committee and would move in the direction of structuring an appropriate formula". He concluded, that Labour Canada "hopes to have a clearer picture after federal-provincial consultations" which were to take place towards the end of October of that year.

When Peter Riggin of the CMA suggested the possibility of turning over ILO operations to the projected tripartite body later to become the Canada Labour Relations Council, Joe Morris did not support it.

Unfortunately, what looked like a consensus among the parties at that meeting was not translated into a functioning instrument. It is difficult for me now to reconstruct the reasons, particularly since some of the main participants at the meeting are no longer involved in ILO matters. However, I was given to understand that two main elements inhibited further positive action: the opposition of several provincial Departments of Labour, Quebec in particular; and the formation and subsequent failure of the broader tripartite body, thus preempting the formation of one restricted to ILO matters. As my proposed committee is not linked to the ratification of Convention 144, or to the implementation of ILO Conventions generally, and, moreover, will remain within the framework of federal responsibilities, the provincial concerns would have a good chance of being assuaged. Moreover, its scope being confined to ILO questions, it would not be affected by the changing fortunes of the tripartite concept in Canada.

Committee's Mandate

In order to avoid past difficulties, the committee's mandate should be restricted, as a start, to two major functions: (1) preparation for the annual consultation of the three parties, held each May, prior to ILO Conferences, and (2) organization of an annual national conference to be held during the month of October or early November, highlighting one of the many subjects of ILO concern.

The annual pre-conference consultations have become a regular Labour Canada feature. All the members of the Canadian delegation to annual ILO conferences, joined by senior officials of Labour Canada, trade unions and employer organizations, are afforded an opportunity to discuss the important items of the conference agenda and related matters. The agenda and preparation for these meetings are the responsibility of Labour Canada.

It could be advantageous to all concerned to have this annual event staged under tripartite auspices. In addition to preparing the agenda, the committee could also facilitate distribution of appropriate papers and comments, thus making all the parties more knowledgeable of the issues expected to surface in Geneva during the conference. By lending to this annual event a tripartite sponsorship and initiative, it could also contribute to a more relaxed atmosphere during the meetings.

By far, the more important responsibility of the proposed ILO tripartite committee could be the organization and preparation of an annual national ILO conference. This event, with tripartite sponsorship and participation, should deal with only one subject to which ILO has made a significant contribution as part of its total concern with conditions of life and work generally. One year it could deal, for example, with industrial health and safety, the following year with some aspects of industrial relations. Subsequent annual conferences could deal with such subjects as equality of opportunity and conditions of women workers, pensions and other social security issues, quality of life, participation in decision-making, etc. Each conference would be confined to one subject. It would give a platform to experts from ILO, OECD, the European Community and those who have made a contribution to this chosen subject within major national jurisdictions. Delegates would be invited through workers' and employers' organizations, provincial governments, universities and other interested bodies. Registration fees should pay for the cost. Invitations could also be extended to all those who in the past have been delegates to ILO conferences and technical meetings, thus adding a certain worthwhile social dimension to these events, by maintaining contact with many people in Canada, who at one time or another have been exposed to ILO issues.

This type of a conference, properly covered by the media, in addition to ventilating important national and international issues of concern to Canada, would throw the limelight once a year on ILO activities, thus helping to create better national visibility for

the organization and the social issues it is concerned with. It would also help Labour Canada to project a better public image, as well as to strengthen bonds with its clientele.

In addition to discharging these two major responsibilities the committee could on an ad hoc basis and after consultation among the parties deal with several other matters related to the ILO or other international bodies. Should it be useful it could take up matters expected to arise at ILO governing body meetings, industrial committees, ILO regional and technical meetings. It could also consider the advisability and feasibility of possible new ILO program areas. In time, with the agreement of all the parties, it could also venture into the area of ILO standards. It may also wish to become involved in such projects as Canada's input in ILO mid-term plans and similar issues. It is important, however, to stress that while the committee's function could easily be expanded care should be taken not to overburden it with ambitious expectations; rather it should start with the two specific functions discussed earlier, while remaining sufficiently flexible to take on other tasks.

Provincial Participation; Size and Structure

The question of the committee's structure and composition should be considered with particular care. As ILO matters have in part been dealt with by Labour Canada within the context of federal-provincial relations, it was almost taken for granted that an ILO national committee could only function with the agreement and participation of Provincial Labour Departments; some even suggested that provincial employers' and workers' organizations should also be represented. While perhaps helpful, I don't think it essential. Simplicity of structure is a pre-requisite for the successful operation of a national committee of this kind. Otherwise, it could become so cumbersome as to cause many old and new problems, such as division of power, of jurisdiction, of unanimity, etc.

It seems to me that it would be best to continue at present with trying to solve federal-provincial aspects of ILO involvement within the existing framework of deputy ministers, CAALL, and other meetings. ILO consultation amongst the parties at the provincial level should be left to each provincial department of labour. Participation at the national committee should be restricted to national bodies with some form of observer participation for provincial interests, if it is found useful by those concerned.

The size of the committee should not be permitted to grow beyond unmanageable proportions, remaining within the 16 to 20 member range. Provisions should be made, in cooperation with the parties, for the participation of other than the most representative organizations, patterned on the selection process for ILO conference delegations. Room could also be found as observers for the Department of External Affairs and other interested government departments. If need be, a small executive committee could also be considered.

Finances and Administration

The committee should for administrative purposes be housed within the Policy Coordination and Liaison Branch of Labour Canada. It may also be useful to provide the committee with some independent servicing capability in the form of a minimum of staff man-hours, responsible solely to the committee, so as to underscore its independent tripartite nature not only in form, but also in substance. A small part-time policy and servicing capability, determined by the committee as a whole, and responsible to it, could become an important factor in underlining the committee's independence, while still maintaining an indispensible link, for financial and administrative reasons, with Labour Canada.

It could, perhaps, be ascertained during the discussions leading to the establishment of the committee, whether the parties would be willing to contribute to its administrative costs. Such contribution would not have to be on the same scale as that of Labour Canada. In any case, I am convinced that cost does not have to pose an insurmountable obstacle, as it should be kept at a bare minimum.

Based on the above I recommend the following:

Recommendation 1: A national tripartite committee

Labour Canada should commence discussions, initially with the Canadian Labour Congress and the Canadian Manufacturers' Association, to consider the establishment of a national tripartite ILO committee.

The discussions on this subject held in September, 1975 (referred to above) should facilitate matters. This meeting should not be linked to other matters of direct or indirect concern to the parties.

Recommendation 2: Federal in Scope and Structure

The composition of the committee should, initially, be confined to federal representation. Provincial departments of labour and federal government departments interested in the subject, could if they so wish, be represented as observers.

This recommendation is made for the purpose of so structuring the committee's terms of reference, as to avoid jurisdictional and constitutional problems which might arise. It would also enable the committee to proceed with a limited, but still worthwhile program of work, without getting involved in the thorny issues of ratification of ILO conventions.

Recommendation 3: An Annual Tripartite ILO Conference

The committee's initial main task would be to sponsor a national tripartite annual conference to deal with only one subject of ILO concern, within the framework of the organization's

involvement with conditions of life and work. In addition, the committee should also be responsible for the convening and preparation for the one-day consultative tripartite meetings, held annually prior to the International Labour Conference.

The national annual tripartite conferences would direct national attention to one subject matter linked to ILO concerns, thus helping the organization to gain public recognition in Canada. They could deal each year with one of the following subjects, or part of them: industrial relations, social security, industrial health and safety, equality of opportunity, quality of life, decision-making at the level of the enterprise. They should be open to participants from management, labour, universities, government departments, delegates to past ILO conferences and meetings and, of course, to the public at large. The conferences should be self-financed through an appropriate registration fee. Consideration should be given to the possibility of contracting out the organization of these meetings to a competent outside body.

Successful annual conferences of this type could also reinforce Labour Canada's contacts with its clientele and give it higher public visibility.

Recommendation 4: Part-time servicing capability

I recommend that the Committee be granted a very limited part-time servicing capability. This recommendation, if implemented, would emphasize the independent nature of the Committee and reinforce confidence in its tripartite nature.

2. ILO Programs of Interest to Canada

On December 31, 1979, the Director-General of the ILO presented a paper, "ILO Medium-Term Plan, 1982-87". Prepared with considerable care, it deserves serious scrutiny by decision-makers in all ILO Member States, not solely for its budgetary implications, which may have been the paper's main purpose, but also for more far-reaching reasons. It pinpoints some of the serious socio-economic issues most likely to surface in many countries during the next six years. While indicating remedial solutions, it also reports on ILO programs now in the planning or implementation stage.

As with the United Nations itself and practically all the associated U.N. agencies and bodies, the thrust of the ILO analysis and projected activities is heavily weighted in the direction of the developing countries. The dramatic statistical presentations could be used to justify this approach. During the 1980-87 period the world's population is expected to increase to five billion from 4 376 million people on January 1, 1980 - an increase of some 600 million persons; 90% of that increase will be in the developing world. The work force is expected to have increased at the end of 1987 by 250 million, 85% of whom will be living in the developing countries. What it means is that as from January 1, 1980,

30 million jobs will have to be created each year in the developing countries just to absorb the newcomers to the labour force, not counting the urgent need of alleviating the near-tragic situation of the hundreds of millions who are now unemployed.

Although by 1987, 75% of the world's population will be living in the developing regions, with Asia alone including China accounting for 57% of this total, the socio-economic problems of the industrialized countries justifiably remain the main concern of their governments, while at the same time not neglecting the plight of Third World people. It does not help those who live under the poverty line in Canada, for example, or the unemployed, or those retired on a minimum income, that the lot of Third World people may be much worse than theirs. The ILO projections tell us to expect an aging population by the end of 1987 in our type of countries in that we will have 4 million fewer young people than on January 1, 1980; our world will actually "lose" 9 million young people between 15 and 24 years of age. This prediction alone raises a host of issues regarding skill formation, productivity, viability of our social security system and availability of educational facilities at all levels.

What's more, the predicted slowdown in the annual rate of growth in the northern hemisphere is far from being reassuring. By 1979 its growth rate will have fallen back to what it was during its industrialization phase: about 2% per year. Should this continue into the 80's, Canada and the other industrialized countries will have to devise new approaches and fashion new tools to curb the inevitable high rates of unemployment, improve working conditions, and reduce existing social inequalities.

What is the role of the International Labour Organization in all this? Is ILO's thrust, mystique and message of equal meaning for us and the other industrialized countries, as it is supposed to be for the Third World? Can we in Canada jointly with other industrialized countries look to the ILO to assist us in devising solutions for our problems of the 80's? It seems to me that it is an essential task of some considerable urgency to define at least a minimum of such ILO involvement and programs. Failure in this regard will inhibit the validity of ILO's universal message. What's more, it will not contribute to a greater appreciation of the Organization or to its visibility in the market place of public opinion.

## Problems of Industrialized Countries

The ILO medium-term plan attempts to define the most urgent problems facing industrialized countries between now and 1987. At the top of the list is the urgent task of raising employment levels, of reducing unemployment. The ILO figure for the present number of job seekers in industrialized countries is estimated at around 20 million. While the impact of micro-electronics and other technological bread-throughs is still a subject of debate, it warns that the service sector may be nearing the limits of its capacity to

absorb excess labour and some surveys suggest that in certain countries it has already begun to shrink. It is certain, though, that the new technologies could have far-reaching long-term socio-economic implications, which the parties to labour relations in the 80's will not be able to ignore. Some of the other social and economic problems facing the West are: Improving working conditions and devising new work patterns; protection of social security and social rights generally in the face of an aging population; the changing role of the modern enterprise and the growth of the public sector and its effects on industrial relations.

The mid-term plan describes ILO's program of activities designed to deal with some of these problems during the first seven years of this decade. It is not necessary for me within the framework of this paper to describe all such proposals; a perusal of the document will suffice. Labour Canada should examine critically each proposal, its usefulness to Canada or other industrialized countries, and its possible thrust.

Working Conditions and Environment

Of particular interest would be an examination of PIACT (French acronym of the International Program for the Improvement of Working Conditions and Environment). There is good reason to believe that PIACT is relevant to Labour Canada and its constituencies. It aims "to bring about working conditions and a working environment which help to improve the quality of working life by preventing accidents and disease and enhancing the physical, mental and social well-being of workers in all occupations". Obviously, Canada has a considerable stake in such a program. Industrial health and safety is becoming increasingly an important program in Labour Canada and the provincial jurisdictions. We may learn a great deal from the projected evaluation of the first phase (1976-81) of PIACT, which is promised for November, 1982. The paper suggests (II.94) that "evaluation inputs would be provided by a series of regional tripartite evaluation meetings which would be organized in Africa, Asia, Latin America, Eastern Europe, Western Europe (and perhaps other OECD countries), evaluation missions to individual countries, and studies of national policies and practices for the prevention of occupational accidents and diseases and improvement of working conditions generally." It is envisaged, furthermore, that this evaluation would be carried further by having a general Discussion Item on this subject at the 1984 Session of the International Labour Conference.

It should be noted that North America is not mentioned specifically in the list of countries where evaluation meetings are planned or to which missions could be sent. It would appear to me that we in Canada and also the United States of America, could benefit from such a mission. The usefulness of a tripartite meeting, perhaps a joint Canada-U.S.A. meeting, to discuss such an evaluation could also be explored.

In view of the above, I make the following recommendations:

Recommendation 5: ILO Mission to North America

Labour Canada should explore with the U.S. Department of Labour the possibility of an ILO evaluation mission to the United States of America and Canada, to study national policies and practices for the prevention of occupational accidents and diseases and the improvement of working conditions generally.

If a joint effort with the U.S.A. should prove to be too difficult, the mission should be confined to Canada.

Recommendation 6: Invitation to Mr. de Givry to Visit Canada

If Recommendation 5 is accepted in principle, Mr. Jean de Givry, head of PIACT, should be invited to Ottawa to discuss the mission's terms of reference, as well as the financial implications.

I may add, that Mr. Blanchard, ILO's Director-General, suggested such a mission to me in June 1980, when I informed him of the nature of my study. It is my understanding that Mr. de Givry would be willing to come here.

Recommendation 7: Other Objectives of the de Givry Mission

Mr. de Givry should, during his mission to Canada, discuss with Labour Canada, and perhaps also with the other partners, other aspects of possible ILO programs of interest to Canada and other industrialized countries.

3. International Fair Labour Standards

The international community, particularly those countries involved with issues of social justice and equity, have been concerned for many years, dating back to the first industrial revolution, with international fair labour standards. ILO historians are fond of stressing that one of the primary incentives for the founding of the ILO was the need to establish international norms to eleminate unfair labour practices and exploitation of workers as an important factor in international trade competition. The ILO International Labour Code with its over 300 instruments (Conventions and Recommendations) is the visible record of these efforts.

The definition and proclamation of these international labour standards, however, while helpful in a number of countries, are far from being universally adhered to or implemented. As a matter of fact, any discussion in Canada about foreign competition is bound to bring forth a stream of statistics on unfair practices in a large number of exporting countries, based largely on what appears in Canada to be substandard wages and working conditions, bordering at times on outright exploitation. Moreover, it is frequently pointed out that many of the ratifying states are the ones most guilty of

such unfair practices. Only effective compliance at the national level makes international standards (and for that matter national standards) worthwhile and not mere lip service to or formal ratifications of conventions.

Efforts have been made in the past to move in the direction of better compliance with international standards. The International Confederation of Free Trade Unions (ICFTU) has considered this problem on numerous occasions. The late UAW President, Walter Reuther, was a dynamic proponent of effective action in this regard; so has the ILO been in many formal and informal discussions. The U.S.A. Department of Labour took the initiative a few years ago to revive the issue, also initiating several meetings with Labour Canada. The U.S. Secretary of Labour, the Honourable Ray Marshall, made a strong plea at the 1979 International Labour Conference for a meaningful ILO involvement in the problem. He was strongly supported in this by our own Minister of Labour, the Honourable Gerald A. Regan, in his address to the Conference. The ILO Director-General indicated that he will make appropriate proposals in response to these initiatives to the Governing Body.

Labour Canada Review

Labour Canada undertook in 1978 a serious review of this issue. Under the direction of John Mainwaring as project director and collaborator and Prof. George Bain as consultant it prepared a paper "Canada, Labour Standards, and International Trade", published in October, 1978, in connection with the "Tripartite Meeting to Review Canadian Role in ILO", held at the Conference Centre in Ottawa on October 13, 1978, which the ILO Director-General Francis Blanchard, also attended. The discussion paper deals, amongst others, with "various ways in which ILO might be made more effective in reducing international competition based on unduly low labour standards". It refers to the inherent difficulties faced by the ILO, and for that matter, by national or international organizations in defining the term "fair labour standards" as well as to assess the efficacy of ILO or other machinery to monitor the degree of compliance with such standards by exporting countries.

The paper concludes that "ILO has the potential for reducing international competition based on unfair labour standards" and proceeds to argue that this potential would more likely be realized in practice by making greater use of certain ILO Conventions, improving the supervisory procedures of the ILO, and better monitoring of the documentation produced by ILO's existing supervisory procedures. It also suggests more direct discussions with interested countries, so as to bring "pressure to bear to amend the rules of GATT so as to include a social or fair labour standards clause which would be administered in co-operation with the ILO".

The review also reminds us that if Canada were to decide to develop these proposals further, it would not be acting in isolation. An Inter-Agency Task Force on Labour Standards and Trade Distortions

has been set up in the United States, recommending to the President to seek "adoption of international fair labour standards and a public petition on confrontation procedures in the GATT". The Nordic countries had also suggested during the long and painful negotiations which led to the present GATT conclusions, the inclusion of a fair labour clause, so that countries would not be required to adjust to imports made under unacceptable working conditions. The EEC explored the possibility of making fair labour standards a part of Lomé II. Many trade union organizations and the ICFTU in its Development Charter have also suggested the inclusion of a "social clause" in the GATT and Lomé II.

Negative Factors

While the concept of fair labour standards as a factor in international trade has over the years enjoyed much enthusiastic support, opposition to it seems to have been successful in blocking progress. Basically, most of the opposition stems from the distrust of the developing countries, which fear that effective machinery to administer fair labour standards will be used by industrialized countries to protect their domestic markets against imports from developing countries. This fear, which is quite genuine, is also fostered by "rejectionist" states in the Third World, which have opposed almost as a matter of principle any attempt to create a meaningful dialogue between North and South. Many governments, while paying lip service to international standards, question the monitoring of their implementation at the national level as an intrusion in their domestic affairs and an attack on their sovereignty. Others, particularly in the industrialized countries, are not yet ready to accept the principle that the primary objective of economic development should be social progress. As to international trade, they do not see the need to stress social factors, believing that these will automatically follow the maximization of trading opportunities for the poor countries. Whatever the reasons, opponents of this concept have succeeded in blocking progress, if not stifling discussions.

One Positive Factor

There is, however, one factor which governments in industrialized countries, including Canada, should not ignore. In order to bring about trade liberalization for the imports of Third World countries, they must develop domestic policies which aim to create alternative gainful employment opportunities for those engaged in industries adversely affected by trade liberalization policies. One of the strongest arguments against trade liberalization is the substandard conditions prevailing in many exporting countries. Advocacy of international fair labour standards assists policy-makers in democratic societies in developing an acceptable and balanced approach to this thorny and most difficult problem of trade liberalization in favour of the poor countries.

Present Status

According to the brief report published by Labour Canada on the October 13, 1978 meeting, it appears that the question of international fair labour standards would be discussed at future tripartite meetings. Paragraph 6 of the "Record of Decisions" states that "... the final report of Professor Bain would be circulated as soon as possible and invited written comments. Further action with respect to the issues raised in the Bain report might be discussed at the informal tripartite discussions agreed upon ..."

It is my understanding that an interdepartmental committee was established to keep this question under review. I also understand that the Economic Analysis Branch in Labour Canada has recently submitted to the Deputy Minister a paper regarding this matter. While I have not seen that paper and am not familiar with its recommendations, if any, based on my own experience and a reading of available material, I recommend:

Recommendation 8: Discussions with IMEC Countries

Labour Canada should renew discussions with several IMEC countries, and in particular the U.S.A., in order to foster continuing interest in the concept of international fair labour standards.

4. ILO Industrial Committee

Industrial Committees have become an important aspect of the ILO Conferences and Meetings program. Until recently there were 10 standing industrial and analogous committees for the following 10 occupational sectors: Inland transport, coal mines; iron and steel; metal trades; textiles; petroleum; building, civil engineering and public works; chemical industries; salaried employees and professional workers; and work on plantations. Canada is a member of the first nine. Standing Committees meet in successive sessions at approximately five years' interval. Non-permanent committees are convened on an ad hoc basis for other occupational sectors such as mines other than coal mines, timber industries, shipbuilding, civil aviation, woodworking industries, hotels and restaurants, leather and footwear, dock labour, printing and allied trades, food products and drink industries, clothing industry as well as the public service sector. I understand that three additional standing industrial committees have been added to the list on the basis of a recent decision of the Governing Body. Although these committees, like all other ILO deliberative bodies, are supposed to deal with problems of developing and industrialized countries alike, their very designation should tilt their deliberations in the latter direction, requiring them to consider issues of concern to Canada and other industrialized countries.

The need for an examination of the industrial committees' relevance to Canada has been recognized in the past by Labour Canada and others. A number of informal discussions have been held, but to

the best of my knowledge no concrete proposals made. Employers' and workers' organizations in Canada have on numerous occasions stressed their interest in the work of these committees and their readiness to cooperate in devising better consultative machinery to make Canada's contribution more meaningful and effective.

There is an obvious need to stimulate discussion as to ways and means to follow up within Canada on the reports, conclusions and resolutions that come out of these Committee meetings; they could provide guidance for national social policies. To be effective, the conclusions of a Committee must be brought to the attention of all those in a position to take action, and from time to time, account must be taken of the progress made towards the goals set out so that the next committee session can assess the impact of its recommendations.

Any examination, therefore, of Canada-ILO relations should not ignore this program. It is doubtful whether Labour Canada could develop a meaningful program with its present limited ILO staff resources. However, some initial effort could now be made to at least reach a consensus amongst ILO partners in Canada as to the need and outline of such a program. Discussions with our friends in several of the Industrialized Market Economy Countries (IMEC) particularly in the U.S.A. and U.K., as to their attitude would also be useful. In addition, should my proposed Canada-ILO national tripartite committee materialize, regular monitoring and consideration of ILO Industrial Committees' activities could become a component part of it's program.

Recommendation 9: An approach to ILO Industrial Committees

Discussions should be initiated at an early date with the ILO partners in Canada and with several IMEC countries with a view to developing an approach to ILO industrial committees, which would enhance their usefulness to Canada. A modest increase in Labour Canada resources should be considered to help develop and implement an effective Canadian capability in this area of ILO activities.

5. European Regional Conferences

ILO regional conferences and advisory committees have over the years become, alongside the industrial committees, another important component of the ILO Conferences and Meetings Program. Canada belongs to the Inter-American region and is a voting member at Inter-American regional conferences. Asia, Africa, and Europe have developed their own ILO regional machinery.

During ILO's formative years, the division based exclusively on geographic factors made sense; it helped to concentrate on those aspects of ILO's universal program which demanded specific regional solutions. However, in the post-World War II period, with the near-completion of the process of decolonization, regional differences can no longer be identified or be synonymous with

economic and social differences. The degree of economic and social development, average per capita income, level of industrialization, political systems and traditions have become hallmarks of identity amongst nations, much more important than geographic proximity. The gap between the poor and rich nations, between those who have advanced industrially and economically and those which are still at the early stages of that process, or who have not basically entered it, has become one of the most visible characteristics of our present-day international climate.

The United Nations system has in part recognized this new international division in devising its regional structure. However, the ILO for a number of reasons, with which I do not necessarily desagree, still maintains a rather rigid regional differentiation.

Consequently ILO regional conferences find it exceedingly difficult to deal with socio-economic issues which are equally relevant to all Member Statesof the region. Obviously, Canada and the U.S.A. for example, do not face in their own countries socio-economic problems similar in intensity and substance to those prevailing in such countries as Haïti, Dominican Republic, Honduras, or even Argentina and Peru - all part of the same regional structure. On the other hand, Canada and the U.S.A. are much closer in this regard, although geographically much more distant, to Japan, New Zealand and Australia in the Asian region, or the OECD countries in the European region.

The regional structure of the ILO has also been affected by the revitalization of the European Regional Conference, which did not get started for many years as a result of difficult political obstacles. These have been removed and the European region has now held two conferences and is getting ready for a third one. These adopted a number of decisions, indicating the necessity for several programs, which are equally relevant to such non-European states as Canada, U.S.A., Japan, Australia, New Zealand and perhaps several others in advancing stages of industrialization, like Israel, Mexico and City States like Singapore and Hong Kong.

Canada should, therefore, explore the possibility of having a closer look at the European regional structure of the ILO. I am not recommending withdrawal from the inter-American region; there are several important political and other considerations which would weigh heavily against such a move. The appropriate solution, at present, would be for Canada to send regular observers to European ILO regional meetings while maintaining its links with the Inter-American region. This should help in monitoring the decisions and recommendations of these meetings and their relevance to us.

Recommendation 10: Observer Status for Canada in ILO European Regional Conferences

Canada should participate on a regular basis as an observer at ILO European conferences and other meetings. Their decisions and recommendations should be monitored regularly from the point of view of Canadian interest.

## 6. Co-operative ILO-OECD-EEC Arrangements

When the ILO was launched in 1919 after the devastating years of World War I and the dramatic impact of the Russian revolution, it occupied a unique place in the socio-economic environment of that time. There was relatively very little by way of research and publications, or for that matter practical programs, in the areas of concern to people in their working environment. The ILO was virtually alone in this field; in fact, it held in certain areas a near-monopoly position. During the following 60 years there occurred a veritable explosion in social sciences, economic theory, governmental and inter-governmental facilities and programs in areas of concern to the ILO. The United Nations Organization the U.N. Agencies and institutions, the U.N. economic regional commissions, the Organization for Economic Co-operation and Development (OECD) and the European Common Market (EEC), to give but a few examples, have developed respectable research and publishing capabilities in areas which at one time were ILO's sole responsibility; so have Labour, Manpower, and Social Security Departments in most of the industrialized countries. Some of these still consult ILO on certain of their projects, but at times it is ignored, even on matters still actively influenced by ILO.

One should not, of course, ignore jurisdictional jealousies and conflicts or empire-building tendencies, particularly in international organizations. However, it would still be worth the effort to develop a co-operative arrangement, involving at least two international, inter-governmental organizations of which Canada is a member, namely OECD and ILO. Perhaps, if this effort succeeds, it could be extended to the EEC.

These three organizations are involved in research and meetings concerning conditions of life and work, including industrial relations, quality of life in the work place, industrial health and safety, social security and many similar subjects. Member States of the OECD and EEC fund the bulk of ILO's budget. Logically, they should also attempt to rationalize the research effort of these organizations and develop some meaningful inter-organizational co-operation. Some of the initiatives proposed in this paper could benefit from such co-operation. Certain other suggested programs such as International Fair Labour Standards, could not hope to succeed without it.

During my conversations with high officials of the U.K. Ministry of Employment and Labour, I was pleasantly surprised to find amongst them considerable support for this approach. In particular, it was suggested that OECD and EEC could use ILO machinery and research facilities in their own work, rather than developing their own redundant capabilities. Labour Canada should further explore this avenue of co-operation in IMEC meetings, and particularly with the U.S.A. and the U.K.

Recommendation 11: Use of ILO Machinery and Research by OECD and EEC

Labour Canada should initiate discussions with several IMEC countries, particularly the U.S.A. and U.K., regarding joint proposals for the use of ILO machinery and research by the OECD and EEC.

RECOMMENDATIONS

1. A National Tripartite Committee

Labour Canada should commence discussions, initially with the Canadian Labour Congress and the Canadian Manufacturers' Association, to consider the establishment of a national tripartite ILO committee.

2. Federal in Scope and Structure

The composition of the committee should, initially, be confined to federal representation. Provincial departments of labour and federal government departments interested in the subject, could if they so wish, be represented as observers.

This recommendation is made for the purpose of so structuring the committee's terms of reference, as to avoid jurisdictional and constitutional problems which might arise. It would also enable the committee to proceed with a limited, but still worthwhile program of work, without getting involved in issues pertaining to the ratification of ILO conventions.

3. An Annual Tripartite ILO Conference

The committee's initial main task would be to sponsor a national tripartite annual conference to deal with only one subject of ILO concern, within the framework of the organization's involvement with conditions of life and work. In addition, the committee should also be responsible for the convening and preparation for the one-day consultative tripartite meetings, held annually prior to the International Labour Conference.

The national annual tripartite conference would direct national attention to one subject matter linked to ILO concerns, thus helping the organization to gain public recognition in Canada. They could deal each year with one of the following subjects, or part of them: industrial relations, social security, industrial health and safety, equality of opportunity, quality of life, decision-making at the level of the enterprise. They should be open to participants from management, labour, universities, government departments, delegates to past ILO conferences and meetings and, of course, to the public at large. The conferences should be self-financed through an appropriate registration fee. Consideration should be given to the possibility of contracting out the organization of these meetings to a competent outside body.

Successful annual conferences of this type could also reinforce Labour Canada's contacts with its clientele and give it higher public visibility.

4. Part-time Servicing Capability

The Committee should be granted a very limited part-time servicing capability. This recommendation, if implemented, would emphasize its independent nature and reinforce confidence in its tripartite nature.

5. ILO Mission to North America

Labour Canada should explore with the U.S. Department of Labour the possibility of an ILO evaluation mission to the United States of America and Canada, to study national policies and practices for the prevention of occupational accidents and diseases and the improvement of working conditions generally.

6. Invitation to Mr. de Givry to Visit Canada

If Recommendation 5 is accepted in principle, Mr. Jean de Givry, Head of PIACT, should be invited to Ottawa to discuss the mission's terms of reference, as well as the financial implications.

7. Other Objectives of the de Givry Mission

Mr. de Givry should, during his mission to Canada, discuss with Labour Canada, and perhaps also with the other partners, other aspects of possible ILO programs of interest to Canada and other industrialized countries.

8. Continuing Discussions Regarding International Fair Labour Standards

Labour Canada should renew discussions with several IMEC countries, and in particular the U.S.A., in order to foster continuing interest in the concept of international fair labour standards.

9. An Approach to ILO Industrial Committees

Discussions should be initiated at an early date with the ILO partners in Canada and with several IMEC countries with a view to developing an approach to ILO industrial committees, which would enhance their usefulness to Canada. A modest increase in Labour Canada resources should be considered to develop and implement an effective Canadian capability in this area of ILO activities.

10. Observer Status for Canada in OLO European Regional Conferences

Canada should participate on a regular basis as an observer at ILO European regional conferences and other meetings. Their decisions and recommendations should be monitored regularly from the point of view of Canadian interest.

11. Use of ILO Machinery and Research by OECD and EEC

Labour Canada should initiate discussions with several IMEC countries, particularly the U.S.A. and U.K., regarding joint proposals for the use of ILO machinery and research by OECD and EEC.

# APPENDIXES

APPENDIX 1

LIST OF ILO CONVENTIONS RATIFIED BY CANADA

| | Date Ratification Registered with ILO |
|---|---|
| No. 1 - Hours of Work (Industry), 1919 (First Session) | March 21, 1935 |
| No. 7 - Minimum Age (Sea) 1920, (Second Session) | March 31, 1926 |
| No. 8 - Unemployment Indemnity, 1920 (Second Session) | March 31, 1926 |
| No. 14 - Weekly Rest (Industry), 1921 (Third Session) | March 21, 1935 |
| No. 15 - Minimum Age (Trimmers and Stokers), 1921 (Third Session) | March 31, 1926 |
| No. 16 - Medical Examination of Young Persons (Sea), 1921 (Third Session) | March 31, 1926 |
| No. 22 - Seamen's Articles of Agreement, 1926 (Ninth Session) | June 30, 1938 |
| No. 26 - Minimum Wage-Fixing Machinery, 1928 (Eleventh Session) | April 25, 1935 |
| No. 27 - Marking of Weight (Packages Transported by Vessels), 1929 (Twelfth Session) | June 30, 1938 |
| No. 32 - Protection Against Accidents (Dockers) (Revised), 1932 (Sixteenth Session) | April 6, 1946 |
| *No. 45 - Employment of Women on Underground Work in Mines of All Kinds, 1935 (Nineteenth Session) | Sept. 16, 1966 |
| No. 58 - Minimum Age for Employment at Sea, 1936 (Twenty-Second Session) | Sept. 10, 1951 |
| No. 63 - Statistics of Wages and Hours of Work, 1938 (Twenty-Fourth Session) | April 6, 1946 |

*Ratification was denounced in May 1978.

| | Date Ratification Registered with ILO |
|---|---|
| No. 68 - Food and Catering (Ships' Crews), 1946 (Twenty-Eighth Session) | March 19, 1951 |
| No. 69 - Certification of Ships' Cooks, 1946 (Twenty-Eighth Session) | March 19, 1951 |
| No. 73 - Medical Examination (Seafarers), 1946 (Twenty-Eighth Session) | March 19, 1951 |
| No. 74 - Certification of Able Seamen, 1946 (Twenty-Eighth Session) | March 19, 1951 |
| No. 80 - Final Articles Revision, 1946 (Twenty-Ninth Session) | - |
| No. 87 - Freedom of Association and Protection of the Right to Organize, 1948 (Thirty-First Session) | March 23, 1972 |
| No. 88 - Employment Service, 1948 (Thirty-First Session) | Aug. 24, 1950 |
| No. 100 - Equal Remuneration (Thirty-Fourth Session) | Nov. 16, 1972 |
| No. 105 - Abolition of Forced Labour, 1957 (Fortieth Session) | July 14, 1959 |
| No. 108 - Seafarers' National Identity Documents (Forty-First Session) | May 31, 1967 |
| No. 111 - Discrimination in respect of employment and occupation, 1958 (Forty-Second Session) | Nov. 26, 1964 |
| No. 116 - Partial Articles Revision, 1961 (Forty-Fifth Session) | April 5, 1962 |
| No. 122 - Employment Policy, 1964 (Forty-Eighth Session) | Sept. 16, 1966 |

APPENDIX 2

LIST OF CONVENTIONS AND RECOMMENDATIONS ON WHICH REPORTS HAVE BEEN REQUESTED FROM GOVERNMENTS UNDER ARTICLE 19 OF THE CONSTITUTION

1949

C.29. Forced Labour, 1930
C.68. Food and Catering (Ships' Crews), 1946
C.69. Certification of Ships' Cooks, 1946
C.71. Seafarers' Pensions, 1946
C.73. Medical Examination (Seafarers), 1946
C.74. Certification of Able Seamen, 1946

R.35. Forced Labour (Indirect Compulsion), 1930
R.36. Forced Labour (Regulation), 1930
R.67. Income Security, 1944
R.68. Social Security (Armed Forces), 1944
R.69. Medical Care, 1944
R.77. Vocational Training (Seafarers), 1946

1950

C.32. Protection against Accidents (Dockers) (Revised), 1932
C.81. Labour Inspection, 1947
C.85. Labour Inspectorates (Non-Metropolitan Territories), 1947

R.40. Protection against Accidents (Dockers) Reciprocity, 1932
R.57. Vocational Training, 1939
R.60. Apprenticeship, 1939
R.81. Labour Inspection, 1947
R.82. Labour Inspection (Mining and Transport), 1947

1951

C.44. Unemployment Provision, 1934
C.88. Unemployment Service, 1948

R.44. Unemployment Provision, 1934
R.45. Unemployment (Young Persons), 1935
R.51. Public Works (National Planning), 1937
R.71. Employment (Transition from War and Peace), 1944
R.73. Public Works (National Planning), 1944
R.83. Employment Service, 1948

1952

C.87. Freedom of Association and Protection of the Right to Organize, 1948
C.84. Right of Association (Non-Metropolitan Territories), 1947
C.97. Migration for Employment (Revised), 1949

R.86. Migration for Employment (Revised), 1949

1953

C.94. Labour Clauses (Public Contracts), 1949
C.95. Protection of Wages, 1949

R.84. Labour Clauses (Public Contracts), 1949
R.85. Protection of Wages, 1949

1954

C.60. Minimum Age (Non-Industrial Employment) (Revised), 1937
C.78. Medical Examination of Young Persons (Non-Industrial Occupations), 1946
C.79. Night Work of Young Persons (Non-Industrial Occupations), 1946

R.79. Medical Examination of Young Persons, 1946
R.80. Night Work of Young Persons (Non-Industrial Occupations), 1946

1955

C.98. Right to Organize and Collective Bargaining, 1949

R.91. Collective Agreements, 1951

C.100. Equal Remuneration, 1951

R.90. Equal Remuneration, 1951

1956

C.81. Labour Inspection, 1947

R.81. Labour Inspection, 1947
R.82. Labour Inspection (Mining and Transport), 1947

C.87. Freedom of Association and Protection of the Right to Organize, 1948

1957

C.26. Minimum Wage-Fixing Machinery, 1928

R.30. Minimum Wage-Fixing Machinery, 1928

C.99. Minimum Wage-Fixing Machinery (Agriculture), 1951

R.89. Minimum Wage-Fixing Machinery (Agriculture), 1951

1958

C.84. Right of Association (Non-Metropolitan Territories), 1947
C.87. Freedom of Association and Protection of the Right to Organize, 1948
C.98. Right to Organize and Collective Bargaining, 1949

R.91. Collective Agreements, 1951
R.94. Co-operation at the Level of the Undertaking, 1952

1959

C.5. Minimum Age (Industry), 1919
C.59. Minimum Age (Industry), (Revised), 1937
C.6. Night Work of Young Persons (Industry) 1919
C.90. Night Work of Young Persons (Industry), (Revised), 1948
C.77. Medical Examination of Young Persons (Industry), 1946

1960

C.102. Social Security (Minimum Standards), 1952 (Reports were also requested under Article 76 of the Convention)

1961

C.29. Forced Labour, 1930
C.105. Abolition of Forced Labour, 1957

R.35. Forced Labour (Indirect Compulsion), 1930
R.36. Forced Labour (Regulation), 1930

1962

C.111. Discrimination (Employment and Occupation), 1958

R.111. Discrimination (Employment and Occupation), 1958

1963

C.52. Holidays with Pay, 1936
C.101. Holidays with Pay (Agriculture), 1952

R.47. Holidays with Pay, 1936
R.98. Holidays with Pay, 1954

C.14. Weekly Rest (Industry), 1921
C.106. Weekly Rest (Commerce and Offices), 1957

R.103. Weekly Rest (Commerce and Offices), 1957

1964

C.3. Maternity Protection, 1919
C.103. Maternity Protection (Revised), 1952

R.12. Maternity Protection (Agriculture), 1921
R.95. Maternity Protection, 1952

1965

C.81. Labour Inspection, 1947

R.81. Labour Inspection, 1947
R.82. Labour Inspection (Mining and Transport), 1947

1966

C.1. Hours of Work (Industry), 1919
C.30. Hours of Work (Commerce and Offices), 1930
C.47. Forty-Hour Week, 1935

R.116. Reduction of Hours of Work, 1962

1967

C.29. Forced Labour, 1930
C.105. Abolition of Forced Labour, 1957

1968

17 Key Conventions

1969

R.97. Protection of Workers' Health, 1953
R.102. Welfare Facilities, 1956
R.112. Occupational Health Services, 1959
R.115. Workers' Housing, 1961

1970

C.111. Discrimination (Employment and Occupation), 1958

R.111. Discrimination (Employment and Occupation), 1958

1971

C.122. Employment Policy, 1964

R.122. Employment Policy, 1964

1972

C.87. Freedom of Association and Protection of the Right to Organize, 1948
C.98. Right to Organize and Collective Bargaining, 1949

1973

R.119. Termination of Employment, 1963

1974

R.90. Equal Remuneration, 1951

1975

R.113. Consultation (Industrial and National Levels), 1960

1976

C.118. Equality of Treatment (Social Security), 1962

1977

R.123. Employment (Women with Family Responsibilities), 1965

1978

C.29. Forced Labour, 1930

1979

C.97. Migration for Employment (Revised), 1949
C.143. Migrant Workers (Supplementary Provisions), 1975

R.86. Migration for Employment (Revised), 1949
R.151. Migrant Workers, 1975

1980

C.138. Minimum Age, 1973

R.146. Minimum Age, 1973

APPENDIX 3

LIST OF PUBLICATIONS PREPARED, RESEARCHED OR SUPERVISED BY THE STUDIES DIVISION (INTERNATIONAL STANDARDS DIVISION)

1968 - Minimum Age for Employment

A study of the action required to bring legislation in each jurisdiction in Canada into conformity with International Labour Conventions.

1969 - Background Papers

An analysis of 23 ILO Conventions; Constitutional Aspect of ILO Conventions.

National Tripartite Conference in honour of 50th Anniversary of the International Labour Organizations.

1970 - Equal Remuneration for Work of Equal Value

A study of the action required to bring legislation in each jurisdiction in Canada into conformity with International Convention No. 100, concerning Equal Remuneration.

1973 - Employment Injury Benefits

1974 - John Mainwaring, A Review of International Labour Conventions, Labour Canada, 1974

1976 - Volume 1 and Volume 2 Where Canada Stands
On the Implementation of ILO Conventions on Occupational Safety and Health

1979 - Canada and the International Labour Code

A study of Canadian compliance with International Labour Conventions, and the action required to bring Canada into conformity with them.

APPENDIX 4

LIST OF REPORTS ON CANADA'S COMPLIANCE WITH ILO CONVENTIONS SUBMITTED TO THE ANNUAL MEETINGS OF DEPUTY MINISTERS OF LABOUR ON ILO QUESTIONS

1970 (First Meeting of Deputy Ministers of Labour on ILO Questions)

Convention No. 10 - Minimum Age (Agriculture);

Convention No. 59 - Minimum Age (Industry) (Revised);

Convention No. 60 - Minimum Age (Non-Industrial Employment);

- Degree of conformity with provisions of Article 3 of Convention 60: Minimum Age (Non-Industrial Employment) - regarding light work;

Convention No. 123 - Minimum Age (Underground Work);

Convention No. 100 - Equal Remuneration;

Convention No. 87 - Freedom of Association and Protection of the Right to Organize;

Convention No. 98 - Right to Organize and Collective Bargaining;

Convention No. 11 - Right of Association (Agriculture);

Convention No. 1 - Hours of Work (Industry).

N.B.: This Convention was ratified by Canada in 1935 (see Labour Convention Case, 1937).

General review of procedure for federal-provincial consultation on ILO matters.

1971 (Second Meeting of Deputy Ministers of Labour on ILO Questions)

- Further consideration of ILO Conventions reviewed in 1970:

Minimum Age for Employment (Conventions 10, 59, 60, 123);

Equal Remuneration (Convention 100);

Freedom of Association and Protection of the Right to Organize and Bargain Collectively (Conventions 11, 87, 98);

- Additional Conventions recently studied:

  Convention No. 81 - Labour Inspection in Commerce and Industry;

  Convention No. 95 - Protection of Wages;

  Convention No. 119 - Guarding of Machinery;

- Employment Injury Benefits:

  Convention No. 102 - Social Security (Minimum Standards) Part VI - Employment Injury Benefit;

  Convention No. 121 - Employment Injury Benefits;

  Convention No. 118 - Equality of Treatment (Social Security).

General review of Canadian position with respect to remaining unratified ILO Conventions.

Procedure for federal-provincial consultations on ILO matters.

1972 (Third Meeting of Deputy Ministers of Labour on ILO Questions)

- Review of the situation with respect to Conventions and Recommendations adopted at the 56th ILO Conference, June 1971:

  Convention No. 135 - Workers' Representatives;

  Recommendation 143 - Workers' Representatives;

  Convention No. 136 - Benzene;

  Recommendation 144 - Benzene;

- Recent developments concerning ILO Conventions reviewed at the meetings of Deputy Ministers in 1970 and 1971:

  Convention No. 87 - Freedom of Association and Protection of the Right to Organize, (Document of ratification by Canada, March 23, 1972);

  Convention No. 100 - Equal Remuneration;

Convention No. 98 - Right to Organize and Collective Bargaining;

Convention No. 11 - Right of Association (Agriculture);

Convention No. 1 - Hours of Work (Industry);

Minimum Age for Employment (Conventions 10, 59, 60, 123);

- Review of additional conventions recently studied by the ILO Branch:

Convention No. 77 - Medical Examination of Young Persons (Industry);

Convention No. 78 - Medical Examination of Young Persons (Non-Industrial Occupations);

Convention No. 124 - Medical Examination of Young Persons (Underground Work);

Convention Nos. 90 and 79 - Night Work of Young Persons (Industrial and Non-Industrial Occupations);

Convention No. 115 - Radiation Protection;

Convention No. 120 - Hygiene (Commerce and Offices);

Convention No. 127 - Maximum Weight;

Convention No. 136 - Benzene;

Convention No. 62 - Safety Provisions (Building);

Convention No. 103 - Maternity Protection (Revised);

General review of the Canadian position with respect to remaining unratified ILO Conventions.

Draft procedure for recording provincial conformity with ILO Conventions when Canada, as a whole, is not yet in a position to ratify them.

1973 (Fourth Meeting of Deputy Ministers of Labour on ILO Questions)

- Recent developments concerning ILO Conventions reviewed at previous meetings:

Convention No. 98 - Right to Organize and Collective Bargaining;

Convention No. 11 - Right of Association (Agriculture);

Minimum Age for Employment (Conventions 10, 59, 60, 123);

Convention No. 81 - Labour Inspection;

Convention No. 95 - Protection of Wages;

Medical Examination of Young Persons (Conventions 77, 78, 124);

Night Work of Young Persons (Conventions 90, 79);

Safety at Work (Conventions 115, 120, 127, 136);

Convention No. 119 - Guarding of Machinery;

Convention No. 103 - Maternity Protection;

- Review of additional Conventions recently studied by the ILO Branch:

Convention No. 96 - Fee-charging Employment Agencies (Revised);

Convention No. 131 - Minimum Wage Fixing;

Convention No. 132 - Holidays with Pay (Revised);

Convention No. 107 - Indigenous and Tribal Populations;

Convention No. 97 - Migration for Employment (Revised).

Future work concerning ILO Conventions.

1974 (Fifth Meeting of Deputy Ministers of Labour on ILO Questions)

Proposals regarding future implementation and ratification of ILO Conventions in Canada (including ILO Conventions suggested as priority targets for implementation and ratification in Canada).

- Recent developments concerning certain ILO Conventions reviewed at previous meetings:

Convention No. 98 - Right to Organize and Collective Bargaining;

Convention No. 11 - Right of Association (Agriculture);

Convention No. 81 - Labour Inspection; (Reference to a study on this Convention made by Miss Lorentsen, former Director of Legislation Branch);

Convention No. 95 - Protection of Wages;

Convention No. 124 - Medical Examination of Young Persons (Underground Work);

Convention Nos. 90 and 79 - Night Work of Young Persons.

- Safety at Work:

Convention No. 115 - Radiation Protection;

Convention No. 120 - Hygiene (Commerce and Offices);

Convention No. 127 - Maximum Weight;

Convention No. 136 - Benzene;

Convention No. 119 - Guarding Machinery;

Convention No. 103 - Maternity Protection;

Convention No. 131 - Minimum Wage Fixing;

Convention No. 132 - Holidays With Pay (Revised).

- Review of additional Conventions recently studied by the ILO Branch:

Convention No. 137 - Social Repercussions of New Methods of Cargo Handling in Docks (Dock Work Convention, 1973);

Convention No. 138 - Minimum Age for Admission to Employment;

Convention No. 106 - Weekly Rest (Commerce and Offices);

Convention No. 94 - Labour Clauses (Public Contracts).

Underground Work of Women in Mines (Convention No. 45) (new legislative developments and the question of denouncing the ratification by Canada).

1975 (Sixth Meeting of Deputy Ministers of Labour on ILO Questions)

- Recent developments concerning ILO Conventions reviewed at previous meetings:

  Convention No. 81 - Labour Inspection;

  Convention Nos. 90 and 79 - Night Work of Young Persons;

  Convention No. 103 - Maternity Protection (Revised);

  Convention No. 95 - Protection of Wages;

  Convention No. 124 - Medical Examination of Young Persons (Underground Work);

  Convention No. 132 - Holidays With Pay (Revised);

  Convention No. 138 - Minimum Age for Admission to Employment;

  Other Conventions - (Nos. 11, 94, 98, 106, 131).

- Review of new Conventions adopted by the ILO Conference in 1974:

  Convention No. 139 - Occupational Cancer;

  Convention No. 140 - Paid Educational Leave.

1976 (Seventh Meeting of Deputy Ministers of Labour on ILO Questions)

Progress report concerning Conventions on safety and health (Conventions Nos. 115, 119, 120, 127, 136, 139).

- Progress report concerning other ILO Conventions reviewed at previous meetings:

  Convention No. 11 - Right of Association (Agriculture);

  Convention Nos. 90 and 79 - Night Work of Young Persons;

  Convention No. 103 - Maternity Protection (Revised);

  Convention No. 95 - Protection of Wages;

  Convention No. 98 - Right to Organize and Collective Bargaining;

  Convention No. 131 - Minimum Wage Fixing;

Convention No. 132 - Holidays With Pay (Revised);

Convention No. 138 - Minimum Age for Admission to Employment;

Convention No. 140 - Paid Educational Leave;

Remaining Conventions (Nos. 94, 106, 124).

- Review of new Conventions adopted by the ILO Conference in 1975:

Convention No. 141 - Rural Workers' Organizations;

Convention No. 142 - Human Resources Development;

Convention No. 143 - Migrant Workers (Supplementary Provisions).

1977 (Eighth Meeting of Deputy Ministers of Labour on ILO Questions)

- Progress report (since the end of 1975), following the publication of "Where Canada Stands", on the implementation of the ILO Conventions on Occupational Safety and Health:

Convention No. 115 - Radiation Protection;

Convention No. 136 - Benzene Poisoning;

Convention No. 139 - Occupational Cancer;

Convention No. 119 - Guarding of Machinery;

Convention No. 127 - Maximum Weight;

Convention No. 120 - Hygiene (Commerce and Office).

- Progress report concerning other ILO Conventions reviewed at previous meetings:

Convention No. 103 - Maternity Protection (Revised);

Convention No. 95 - Protection of Wages;

Convention No. 96 - Fee-Charging Employment Agencies (Revised);

Convention No. 132 - Holidays With Pay (Revised);

Convention No. 140 - Paid Educational Leave;

Remaining Conventions (Nos. 11, 90, 79, 94, 98, 106, 124,131,138, 141, 142, 143).

- Review of a new Convention adopted by the ILO Conference in 1976:

  Convention No. 144 - Tripartite Consultation (International Labour Standards);

1978 (Ninth Meeting of Deputy Ministers of Labour on ILO Questions)

- Review of Conventions adopted by the ILO Conference in 1977:

  Convention No. 148 - Working Environment (Air Pollution, Noise and Vibration);

  Convention No. 149 - Nursing Personnel.

- Progress report on the Implementation of ILO Conventions in Canada:

  (a) the study: "Canada and the International Labour Code";

  (b) reports on selected Conventions.

- Safety and Health Conventions:

  (Conventions Nos. 115, 136, 139, 119, 127, 120);

  Convention No. 132 - Holidays With Pay (Revised).

1979 (Tenth Meeting of Deputy Ministers of Labour on ILO Questions)

- Review of Conventions adopted by the ILO Conference in June 1978:

  Convention No. 150 - Labour Administration: Role, Functions and Organization;

  Convention No. 151 - Labour Relations (Public Service).

- Progress report on the implementation of ILO Conventions in Canada:

  (a) Report of Labour Canada Working Party to review federal compliance with selected ILO Conventions. N.B. The report is entitled: "Review of Federal Compliance with Selected ILO Conventions" March, 1979;

  (b) Recent legislative changes affecting compliance.

- Safety and Health Conventions:

  Convention No. 103 - Maternity Protection;

Convention No. 95 - Protection of Wages.

1980 (Eleventh Meeting of Deputy Ministers of Labour on ILO Questions)

- Review of Conventions adopted by the ILO Conference in June 1979:

  Convention No. 152 - Occupational Safety and Health in Dock Work;

  Convention No. 153 - Hours of Work and Rest Periods in Road Transport;

- Canadian compliance with ILO Conventions:

  (a) Canadian Government policy on ratification of ILO Conventions;

  (b) ILO In-Depth Review of International Labour Standards.

- Compliance in Canada with selected ILO Conventions:

  Convention No. 29 - Forced Labour;

  Convention No. 150 - Labour Administration.

- Progress Report regarding other Conventions:

  (a) Conventions Nos. 98, 131, 106;

  (b) Legislative changes affecting compliance:

    (i) Safety and Health Conventions;

    (ii) Labour Standards Conventions.

  Convention No. 95 - Protection of Wages;

  Convention No. 132 - Holidays With Pay.

APPENDIX 5

Mr. Ian Lagergren,
Deputy Chief of the International
Labour Standards Department,
International Labour Office,
CH 1211, Geneva,
Switzerland.

Our Ref. 628-95-2 Vol.2

January 24, 1975.

Dear Mr. Lagergren:

I wish to thank you very much indeed for your letter of December 6, 1974 (Ref. ACD 2-11) and your comments on our draft of a proposed paper on the implementation in Canada of Convention 95 - Protection of Wages.

I particularly appreciate the note entitled - "Means of Application of the Protection of Wages Convention, 1949 (No. 95)" which will be of assistance in revising our approach to the nature of the measures required to implement this Convention.

I was also interested in the opinion contained in the note in question that the implementation of Article 3(1) and Article 6 of the Convention would necessarily require implementation by laws or regulations. Apparently these views were prompted primarily (if not exclusively) by the words "shall be prohibited" used in both provisions. (I noted however that with reference to Article 6 your approach in the covering letter is more flexible).

At the time when we were considering these provisions our approach was that a factual situation of compliance would be sufficient and therefore specific legislative action would not be required. We thought that in taking this approach we could rely on Article 19(5)(d) of the ILO Constitution which provides that upon ratification of a Convention the Member "will take such action as may be necessary to make effective the provisions of such Convention." We interpreted this provision to mean that legislative action under this provision of the ILO Constitution would be necessary to repeal or amend existing legislation which is contrary to the Convention or to prevent actual practices which are contrary to the Convention. But when the established practice was in conformity with the Convention we thought that legislative action might be superfluous. This approach was reinforced by the circumstances of ratification by Canada in 1959 of Convention 105 - Abolition of Forced Labour. If I recall correctly Canada ratified this Convention on the assumption that there was no system of forced labour in Canada that needed to be

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abolished by specific legislative measures and there was no legislation in Canada which would be inconsistent with, or in contravention of, the provisions of the Convention that would need to be repealed or amended. In these circumstances, it was thought that no legislation was required to implement the provisions of Convention 105.

Actually, the ILO Committee of Experts later found that certain provisions of the Canada shipping Act and in the Federal Prisons and Penitentiary Act were offending certain provisions of the Convention and we have been requested to repeal the offending provisions. But we have not been asked to legislate the abolition of forced labour as such.

After reading your letter and the attachments I realized that the provisions of Article 19(5)(d) of the ILO Constitution (if relevant to the problem of implementation of ILO Conventions) could also be interpreted in a different way; namely, that the necessary action envisaged in that Article may depend solely on the actual wording of various provisions of a given Convention. If a provision is of mandatory character by using the words "shall be prohibited" then its implementation would necessarily require legislative action notwithstanding the actual need for such action in a given country.

Considering the above I would appreciate having your informal opinion on the following:

(a) is Article 19(5)(d) of the ILO Constitution relevant to the question of implementation of ILO Conventions? and if so -

(b) what is the meaning of the words "will take such action as may be necessary to make effective the provisions of such Convention". And in particular -

  (i) does "necessary action" mean legislative action when warranted by the situation of law or fact (or both) in a given country; or

  (ii) does it mean legislative action whenever the wording of a given provision in a Convention indicates its mandatory character.

Such clarification would be of great assistance to us in assessing the nature of the measures required to implement not only Convention 95 but also other Conventions which we are presently studying or will consider in the future.

Yours sincerely,

Jan K. Wanczycki,
Chief, International Standards,
International Labour Affairs.

APPENDIX 6

Mr. Jan K. Wanczycki,
Chief, International Standards
Division,
International Labour Affairs,
Department of Labour,
340 Laurier Avenue, West,
Ottawa, Ontario K1A 0J2
(Canada)

Our Ref. ACD 2-11

Your Ref. 628-95-2 Vol.2

Dear Mr. Wanczycki:

I wish to refer to your letter of January 24, 1975, in which you raised certain supplementary questions following the note which I sent you in December regarding the Protection of Wages Convention, 1949 (No. 95). As I explained to Mr. de Merlis during the last session of the Governing Body, our work in connection with the recent meeting of the Committee of Experts on the Application of Conventions and Recommendations unfortunately prevented us from dealing with these questions earlier.

You are clearly right in considering that the obligation stated in Article 19, paragraph 5(d) - "to make effective" the provisions of any ratified Convention - is relevant to the implementation of Conventions. However, what needs to be made effective must depend on the actual wording of each instrument. Thus, the nature of action to be taken will differ greatly as between a Convention which requires a ratifying State to declare and pursue a particular national policy (such as the Employment Policy Convention, 1964 (No. 122)) and a Convention which provides that the use of certain toxic substances in work processes shall be prohibited (such as Article 4 of the Benzene Convention, 1971 (No. 136)).

Your reference to the Abolition of Forced Labour Convention, 1957 (No. 105) seems very apposite. This Convention requires ratifying countries "to suppress and not to make use" of any form of forced or compulsory labour in the five cases enumerated and "to take effective measures to secure the immediate and complete abolition" of any such forced or compulsory labour. As the exaction of forced or compulsory labour for purposes mentioned in Article 1 of the Convention would generally require legislative authority, the Committee of Experts has been concerned that no legislative provisions of this kind existed, but has not insisted on any express legislative prohibition. This situation may be contrasted with that arising under the Forced Labour Convention, 1930 (No. 29), which, in addition to

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requiring ratifying States "to supress the use of forced or compulsory labour in all its forms within the shortest possible period", also provides (Article 25) that "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced". In the light of these provisions, the Committee of Experts has always insisted that countries bound by Convention No. 29 must have appropriate penal provisions to punish illegal exaction of forced labour.

It is on the basis of similar considerations of the actual wording of the various provisions of Convention No. 95 that we prepared the comments sent to you last December. Where that Convention provides for a particular type of action to be prohibited, and supplements this with a general requirement for the prescription of adequate penalties or other appropriate remedies, it would appear difficult to accept mere practice as making these requirements effective. It has to be borne in mind that, in an area such as the method and manner of wage payments, considerable scope may exist for innovations departing from previous practice (as is understood to have occurred even in some industrialized countries, for example, among certain immigrant workers). It must also be remembered that the Committee of Experts has to approach questions of the kind raised by you with reference to Convention No. 95 in a manner equally applicable to all member States.

Since your inquiry about the relevance of Article 19, paragraph 5(d) of the ILO Constitution was made for the purpose of clarifying the significance of this provision not only for Convention No. 95, but also for other Conventions which you may wish to study, I should add that we have considered its implications in relation to certain Conventions which, while laying down standards intended to prohibit or prevent certain practices, did not specifically provide for sanctions. Examples of this kind are provided by a number of Conventions relating to minimum age for employment (Nos. 5, 7, 10, 15, 58, 59 and 112), night work (Nos. 4, 6, 41 and 89), medical examination (Nos. 16, 73, 77, 78 and 113) or certain questions of occupational safety (Nos. 27, 115 and 127). In such cases, in examining the reports from ratifying States, we have sought to ascertain that there existed sanctions or other suitable provisions by which the observance of the substantive requirements of the Convention could be enforced and the Convention thus "made effective" in accordance with the general constitutional requirement.

I hope that these various indications will be found useful.

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We are also now taking up again the various other questions on which you have sought our informal views, concerning Conventions Nos. 100, 127 and 136, and hope to send you our comments shortly.

Yours sincerely,

Ian Lagergren,
Deputy Chief,
International Labour
Standards Department.

APPENDIX 7

DRAFT AGENDA

CANADIAN TRIPARTITE MEETING ON ILO QUESTIONS

1. Canadian position with respect to the requirements of the proposed ILO Convention and Recommendation on Tripartite Machinery.

2. Furthering of ILO work in Canada:

   - access to ILO publications and information;

   - Canadian contribution to ILO Labour and Social Bulletin;

   - recruitment of Canadians;

   - Canadian participation in ILO technical co-operation programs.

3. ILO Conventions and Recommendations:

   (a) need for a concise, modern ILO Code of "target" Conventions (n.b. In-Depth Review by the ILO Governing Body of the International Labour Standards Program);

   (b) Canadian program of studies and federal-provincial discussions;

   (c) procedure for a province to delcared its conformity with a Convention;

   (d) Canadian position with respect to certain key Conventions;

   (e) proposed denunciation of Conventions Nos. 1 and 45.

4. Industrial Committee meetings and other ILO meetings.

5. Exchange of views on desirability of further tripartite meetings on ILO questions:

   - national level;

   - federal-provincial consideration.

6. Other business.

APPENDIX 8

TRIPARTITE MEETING ON ILO QUESTIONS
OTTAWA, APRIL 25, 1979

AGENDA

1. Briefing for the 65th Session of the ILO Conference, June 1979:

   (a) Hours of Work and Rest Periods in Road Transport (Second Discussion);

   (b) Revision of the Protection against Accidents (Dockers) Convention (revised), 1932 (No. 32) (Second Discussion);

   (c) Older Workers (First Discussion);

   (d) Follow-up of the World Employment Conference: basic needs;

   (e) Other Conference matters.

2. Other Business.

APPENDIX 9

SECOND TRIPARTITE MEETING ON ILO QUESTIONS
HULL, APRIL 23, 1980

AGENDA

1. Minutes of last Meeting (April 25, 1979).

2. Items on the Agenda of the 66th Session of the ILO Conference, June 1980:

   (a) Older Workers: Work and Retirement (Second Discussion);

   (b) Promotion of Collective Bargaining (First Discussion);

   (c) Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (First Discussion):

   (d) (i) Safety and Health and the Working Environment (First Discussion);

   (ii) Amendment of the List of Occupational Diseases Appended to the Employment Injury Benefits Convention 1964 (No. 121).

   (e) Other Conference Matters.

3. Study on Federal Compliance with ILO Conventions.

4. Other Business.